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THE RIPLEY REPORT ON RAILROAD CONSOLIDATION

WALTER SPLAWN
Texas Railroad Commission

Professor William Z. Ripley of Harvard University prepared a report at the request of the Interstate Commerce Commission upon which that Commission based its tentative plan. Before considering the tentative plan it would be well to look to this report.

The purpose of the act is first considered.¹ It is pointed out that while by far the larger proportion of the traffic of the United States is carried by so-called strong or prosperous roads, a large amount of mileage is in the hands of financially weak corporations. That these weak lines are as essential to the welfare of the communities which they serve as are the strong lines to their patrons. "It is the theory of the transportation act that the railways must be considered as a whole, group by group, fixing by means of the new statutory rule of rate making, a general level of return adequate to maintain them all at a proper pitch of efficiency." Senator Cummins is quoted as saying: "It has been utterly impossible for any body of men to make a system of rates that will sustain the weaker railroads of the country without giving to the stronger railroads an income excessive and intolerable in its extent; and there lies the great fundamental obstacle in our system of rate mak-

¹Appendix to the Tentative Plan of the Commission, p. 476.

ing." It was then the problem of the weak or necessitous road that consolidation was supposed to solve. The weaker roads were to be encouraged to seek shelter through affiliation with the stronger.

The requirements of the statute are set forth as to preservation of competition, not disturbing existing routes and channels of trade, and as to the financial requirements. It is duly acknowledged that neglect of financial consideration would be fatal.

In discussing the method of approach to the matter of consolidation, it is held that the maintenance of the "existing routes and channels of trade and commerce" implies not the preservation of merely artificial currents and conditions, but that the statute contains an invitation to consider welfare, present and prospective, of the country. That it calls for an analysis of the commercial geography of the United States, in its relation to the layout of its railway net. "For, unless the location of its railways conform to the commercial requirements of the country, there can be no permanent prosperity for either."

As to procedure the report dissents from the contention of some that the plan should confine itself strictly to broad outlines or to a statement of principles. It is urged that experience demonstrates that general principles and broad outlines may only be tested, as to their feasibility, by tentative elaboration of the finer points. It is therefore recommended that the tentative plan should suggest the details of specific combinations. For only by that procedure could a thousand and one complications be rendered appreciable to the naked eye.

There is then a confession that the statistical data submitted constitute merely a rough check upon the plan. That while they afford the best available check, yet they are not to be relied upon as conclusive.

There is an interesting discussion of what test should be applied in order to ascertain competitive ability; that is ability reasonably to prosper along with other railroads in the same group under a uniform set of rates. It is suggested that neither mileage nor volume of business is the

real test of competitive ability to exist under the statute. "If quality can be conferred by means of better developed traffic relationships, and if natural alignment and relationship can be adhered to, it is believed that the situation so far as the act is concerned will be satisfactorily met."

The purpose of the act is said to be not to guarantee an income but to afford an equality of opportunity to earn it.² In considering how to realize this aim, several important propositions are laid down. It is agreed that the boundaries of traditional territorial subdivisions for rate making purposes should not be transgressed. It is decided, however, that the preparation of a comprehensive consolidation plan necessarily involves a disruption as well as a putting together of relationships. But, such dismemberment should be rigidly minimized. Again, that the tentative plan is prepared on the assumption that the distinction between so-called strong and weak roads, financially, is at present highly uncertain. There is also a confession that in some parts of the country there are so many weak lines that they cannot be affiliated with strong lines as the act contemplates. The hope is expressed that grouping them may bring good through an exercise of the new rate making powers of the Commission. There is also an admission that competition can hardly be preserved as the act required, and at the same time group the weak roads with the stronger. For the weak lines tend to link up into series and to form through routes extending across the country and furnishing much of the existing and important competition. It is brought out that the requirements of the statute are in conflict. For the mandate to preserve traffic association leads to a consolidation of sub-standard roads. Conformity with the other mandate to ally weak with strong roads would break up established traffic relationships.

Thus early in the report Professor Ripley incidentally indicates the impossibility of complying with the mandate.

The plan prepared by Professor Ripley involves several

²*Ibid.*, p. 480.

assumptions.³ First, that a substantial readjustment of capitalization must be made before a number of roads are absorbed into consolidated systems. This is obviously to remove weakness, which is due to overcapitalization, and too, to bring about a due relationship between capitalization and the valuation assignable to the property for rate-making purposes. Second, that all of the new powers conferred upon the Interstate Commerce Commission by the Transportation Act, of 1920, will be upheld by the courts as constitutional. For the plan to be prepared and finally published as final is to have the effect of suspending the anti-trust laws, supposing that the act is constitutional and that the plan is prepared in strict compliance with the terms and requirements of the statute. That this assumption was well founded is borne out by the decision of the Supreme Court sustaining the constitutionality of the recapture clause.⁴ Third, it is assumed that there shall be a provision for open terminals, both at the point of shipment and at destination. For "the right of route across the country is impaired if the only possible delivery is at an inconvenient point. To put together railway lines on the map without bearing a constant regard to the possibility of free delivery or receipt at either end would indeed be futile. It is well said that the consolidation can never be effectively brought about without the adoption of a comprehensive policy as to terminal ownership, operation, or both. A fourth assumption is that there should be encouragement of alternate routes and gateways, in order to relieve present or prospective congestion at the great railway centers.

The high purpose and the idealism of the author of this remarkable report is shown in the concluding paragraph of his introduction to the report:⁵ "The preparation of such a plan of consolidation thus affords a unique opportunity for the evolution of a comprehensive plan for the development of national resources. Too often in the past purely temporary or personal considerations of advantage or

³*Ibid.*, p. 482 ff.

⁴44 Sup. Ct. Rep. 169.

⁵Loc. Cit. p. 484.

profit have determined the location of our American railways. The administrative control of the terms on which the carrier companies may be allowed further to ally themselves in the future, may, if wisely administered, contribute to diminish economic waste and to promote commercial development. But such wise administration demands a comprehensive plan adopted in advance, and it is evidently the purpose of the act to draw up this plan, not alone for the attainment of the immediate rate-making but also with a view to the larger purpose of a right direction of our economic resources as a nation in the years to come." In this expression the author of the report states his faith in the efficacy of consolidation, interprets the law as ideally as possible, and demonstrates his own fitness, so far as attitude is concerned, for the responsibility imposed upon him.

II

The report deals with the railroads of the country by territorial groups. These groups are discussed in the following order: (1) Trunk line territory; (2) the New England region; (3) the Chesapeake region; (4) the Southeastern region; (5) the Western transcontinental region; (6) the Southwestern-Gulf region.

We will consider first the report as it deals with Trunk line territory. Certain features of that territory which make the consolidation problem simple on the one hand and difficult on the other, are mentioned. The problem is simplified by the fact that the traffic is predominantly east and west along parallel lines. While this is a patent fact, there are other conditions that complicate the problem of creating independent, self-sufficient systems which shall compete with one another on approximately equal terms. First, there is disparity in size and competing strength of existing properties. Second, a number of existing properties consist of disjointed links lying east and west of the Niagara frontier or else divided at the head of Lake Erie. Third, some of the strongest systems have a superfluity of

approaches to strategic points, while their competitors are denied access to such points. Fourth, but few east and west passageways across the rugged Alleghany territory are capable of utilization.

Considering these geographical limitations, five main stems connecting St. Louis and Chicago with the Atlantic Seaboard, are found. They are (1) the New York Central route, (2) the Pennsylvania system, (3) the Erie and the Wabash, (4) the Baltimore and Ohio, (5) the Nickel Plate with portions of the Lehigh Valley and the Lackawanna, making a composite system.

It is most interesting to read this chapter of the report, bearing in mind that consolidation was supposed to furnish a solution of the problem of the weak road; that the necessitous roads were to be merged with strong and prosperous lines. It is readily recognized that the New York Central, the Pennsylvania system, and the Baltimore and Ohio, are what may be termed strong properties within the meaning of the statute. It is also readily admitted that they are about large enough as systems, that they already have access to tonnage producing areas, and to gateways and terminals. Besides these three powerful systems are seen two lesser east and west main stems around which systems may be built. It is agreed that there should be five systems, one to include each of the above mentioned stems running east and west. It is conceded that each system in order to compete successfully with the others must have access (1) to important lake and Ohio River gateways, (2) to direct connection with western trunk lines, to gateways other than Chicago, and along the Illinois and the Mississippi Rivers, (3) to free participation in Michigan ferry routes, (4) to soft coal deposits, and (5) to the centers of production of iron and steel. Three of the possible systems have access to these points of advantage. Two of these, the Erie and the Nickel Plate—Lackawanna, lack such access. To make these two systems capable of any sort of competition with the others, they have to be furnished access to these sources of traffic. To give them such opportunities requires that the smaller lines not affil-

iated be merged with the Erie and the Nickel Plate. It so happens that these unaffiliated lines contain the weak properties of trunk line territory. The Erie and the Nickel Plate are relatively weak and less able to carry the burden of the necessitous roads. Yet to give them access to strategic points requires that they be consolidated with a number of weak properties. Consequently we have the strong properties of Trunk line territory left practically undisturbed, and not burdened with any particular load of weak properties, while alongside them the weak are consolidated with the weak. Instead of solving the problem of the necessitous roads, this promises to perpetuate that problem in official territory. For rates that will sustain the Erie and Nickel Plate with those affiliated weak properties, will likely give undue prosperity to the stronger New York Central, Pennsylvania, and Baltimore and Ohio systems, and rates merely sufficient to yield a fair return upon the properties of the three great systems, might in all probability force the Erie and Nickel Plate into bankruptcy.

It is recognized that the three strong roads have pre-empted the best lines and facilities. The great problem of Trunk line territory is presented by the Erie and the Nickel Plate-Lackawanna. It is concluded that they should constitute the trunks of independent self-sufficient systems. The suggestion that these two stems be consolidated into one system is dismissed on the ground (1) that they parallel each other almost completely from end to end without at the same time being near enough together to produce the possible advantage of joint operation and too, such a system would have a mileage even greater than the present Pennsylvania and "considering the detached character of many of these properties, a heterogenous aggregation altogether surpassing the possibility of efficient management would certainly be produced." (2) A second objection to putting the Erie and the Nickel Plate-Lackawanna into one system is that it would enforce corporate relationships which are unnatural or strained. It would be to compel roads which have been bitter competitors for many years to become partners. It might have been added, too, that

such a combination would be a flagrant disregard of the statutory mandate to preserve competition as fully as possible.

In turning to a detailed consideration of how the five proposed groups should be constituted three tests are laid down: (1) size, (2) financial strength, (3) comprehensive possession of the trunk line territory. Applying these tests it is concluded that the Pennsylvania and the New York Central have substantially fulfilled their destiny. That is, that they are big enough, financially strong, and that they reach all of the important centers and gateways and have sufficient laterals and feeders. In fact these systems are so well fortified that it is thought that the problem they present is one of withdrawal of subsidiary lines, rather than additions thereto. Here again a confession in the report that it is for practical considerations inexpedient to merge any weak properties with these two giant systems of the East. They are to go practically free from any burden contemplated by the statute. The problem of the weak road emphasized so strongly in the introductory chapter of the report is left to weak systems and not to the strong.

It is suggested that the Lake Erie, or the larger portion of it, be taken from the New York Central. Amputation of the Konawha and Michigan and parts of the Toledo and Ohio Central Railroads is also recommended, largely because such severances would not appear to be prejudicial. It is then proposed that the New York Central be given more complete control of a route to the Canadian maritime provinces through acquisition of the Rutland Railroad.

As for the Pennsylvania System, it is said that it should not be carried into New England through an absorption of the New York, New Haven and Hartford because the Pennsylvania has already attained a predominance among the trunk lines which renders further accessions undesirable. For the same reason the Pennsylvania is denied the Norfolk and Western, which is controlled through stock ownership.

It is proposed to add to the Baltimore and Ohio certain properties so as to strengthen it financially and as a com-

petitive factor throughout trunk line territory by upbuilding at each of its extremities. It is to be given access to the Michigan Peninsula and ferries and across Indiana and Illinois to connections with western trunk lines elsewhere than Chicago. This is to be done by reassignment to the Baltimore and Ohio of the Cincinnati, Indianapolis and Western Railroad. Also it is to be strengthened in the West by an inclusion of the Monon. In the East it is proposed to give it access to New York through control of the Philadelphia and Reading, and the Central Railroad of New Jersey. That is to say, the Baltimore and Ohio, reasonably well able to care for its own, instead of burdened with a quota of weak roads, is recommended as a proper and fortunate recipient of the much coveted and prosperous Philadelphia and Reading and the Central of New Jersey.

The Erie's weakness is analyzed. Its location seems almost to avoid the great cities or interior ports. Its great capitalization is a chronic source of weakness. Its problem is represented to require (1) a readjustment of its capitalization to the value of its physical properties, (2) the acquisition of feeders and entrance into new territory. No suggestion is offered for recasting the financial plan so as to reduce fixed charges, and to bring the total par value of outstanding securities in line with actual investment. However, the rounding out of the Erie, so as to put it into other traffic bearing territory, is proposed by the addition of the Delaware and Hudson; the Ontario and Western; the Lehigh Valley which is a coal road; and the eastern half of the Wabash as a line to St. Louis; the Pittsburgh, Bessemer and Lake Erie, a prosperous property which would add financial strength as well as an excellent entrance to Pittsburgh. It is said the Erie should have access to Indianapolis and Columbus, but no definite recommendation of means is made other than a reference to the possibility of asquiring trackage rights. In order to put this system into the soft-coal region, it is proposed that it be given two small properties with their heavy grades and switchbacks: the Pittsburgh, Shawmut and Northern, and the Pittsburgh and Shawmut.

The Nickel Plate, a line about 500 miles long, paralleling the Lake Shore from Buffalo to Chicago, built to force the Lake Shore to buy it, and recently sold by the New York Central System, is taken as a nucleus for a fifth system. It is proposed that the strong Lackawanna shall be joined to the Nickel Plate. It is recognized that enormous expenditures will be necessary to bring the Nickel Plate up to the standard of the Lackawanna. But it is also refreshingly stated that even Trunk line territory has not yet reached its full development, and that in the future a first class railroad, such as the Nickel Plate would be rendered, will be needed. It is proposed to put this system into St. Louis by way of the Clover Leaf. This last mentioned road also reaches Detroit. By way of feeders in the West, the Lake Erie and Western is suggested. The system would get over the tracks of the Toledo and Ohio Central, into soft coal area, and iron and steel directly by inclusion of the Wheeling and Lake Erie, the Pittsburg and West Virginia, and the Western Maryland. Strength too it is thought would be added by absorbing the Buffalo, Rochester and Pittsburg. This would round out a system of approximately 4,000 miles.

A different problem is presented by the railroads in the lower Michigan Peninsula. The New York Central and the Pennsylvania have their own needs amply cared for in this area. The Pere Marquette has traffic alliances with the Baltimore and Ohio. This is an important traffic area. It is important that each system have free access to the Michigan ferries. There do not seem to be enough good railroads in the area to go around. That suggests the alternative of putting together all that are free, and making a small local system which would deal with all the systems. This is the plan suggested, and a regional group is proposed which would be built around the Pere Marquette. It is advocated that this regional system be given its own outlet to the soft coal region through acquisition of the Detroit, Toledo and Ironton. It is believed that such a regional grouping would render the manufacturers of Michigan independent of the Trunk lines and enable them to route

by way of South Atlantic and Gulf ports, if they should desire.

A striking parallel is drawn between the Michigan Peninsula and the New England situation. In each there is a long water frontage, a rich industrial district in the South with many junction points, a more sparse population and thinner traffic toward the north, and a dependence upon outside connections for coal and many other supplies. There are ferry routes across Lake Michigan to the northwest, and differential Canadian routes from New England.

The second chapter of the report deals with the New England region. New England's transportation problem is recognized as threefold: (1) to provide the lowest possible rates on inbound raw materials such as coal, cotton, iron and steel; (2) to obtain cheap transportation for foodstuffs and other necessities of common life from the distant centers of their production; (3) to secure outbound freight rates on finished products, so that they may stay in the markets of the interior in spite of competition from the developing industries in the interior.

New England has no trunk line system dependent upon any of her seaports or markets. Her railroads are largely local. They have thus far striven for the objectives just stated by playing off one trunk line against another in the matter of interchange traffic. New England has too been the beneficiary of ocean and coastwise steamship transportation. The water transportation is not affected by consolidation. Professor Ripley addresses himself to the problem of securing the threefold benefits he mentioned as indispensable to New England. He concludes that it can best be accomplished by strengthening the bargaining power of the New England railroads. That he thinks can best be done by a regional consolidation of all New England roads.

The requirements of the statute would seem to call for an allocation of the New England railroads to the various competing Trunk lines. That would preserve existing competition, such as remains, within New England. Then too the New England railroads are not prosperous on the whole. They are in need of some support if we are to have consoli-

dation. It is in keeping with the views expressed by the author of the report in his introductory chapter wherein he pointed out the purpose of consolidation to relieve and sustain the weaker properties. It would certainly be in keeping with the spirit and the purpose of the statute to merge the New England roads with the Trunk line systems. Then, too, in support of this position some of the expected advantages from consolidation are urged.⁶ Among these are the relief of New England carriers from the per diem debit balances. For the trunk line equipment would move into New England as the property of a system owning the New England rails. Then from such consolidation more efficient operation in train loading and movement are expected. Too, overhead expenses for administration might be more appropriately distributed, a better balance of traffic in and out might obtain, and company fuel could be brought in at cost were the New England roads attached to the eastern systems.

Says the report "the essential difficulty in the Trunk line plans, however, is not their soundness in the abstract but their concrete application." We might observe right here that Professor Ripley has put his finger upon the real difficulty in carrying out any theoretically desirable plan for consolidation: its impracticability. The report goes on to say in justification of abandoning the statutory plan in favor of a single monopolistic regional group, that the Trunk lines pair off as respects financial and operating strength. "It would upset all balance to ally the New Haven with one of the strongest Trunk lines, and to deny the Boston and Maine affiliation with another Trunk line equally dominant." That is one way of saying that it is impossible to group the New England roads and preserve balance between competing systems absorbing them.

Objections to particular mergers are urged. A consolidation of the New Haven with the Pennsylvania is said to be undesirable because of: (1) the already preponderating size of the Pennsylvania System as a whole; (2) the lack

⁶*Ibid.*, p. 515.

of a surplus earning power on the part of the Pennsylvania at present to build up a broken-down property such as the New Haven is by inference represented to be; (3) the undesirability of further congesting transportation conditions in and about New York City. A suggestion that the New Haven go with the Nickel Plate is rejected because that system exists only on paper in the report, and there is too much risk involved in committing the interests of southern New England to a mere prospective and not too promising Trunk line system. It is thought that merger of the New Haven with the Baltimore and Ohio is the most promising of the possible combinations. But this too is rejected because (1) the Baltimore and Ohio is from New England the longest of all Trunk line routes to Chicago. (2) The Baltimore and Ohio is primarily interested in Baltimore, or at least it would have to pass all the other great Atlantic seaports before reaching Boston. How then could it become a Boston road featuring a New England seaport and market? Turning to northern New England, advantage is admitted in merging the Boston and Maine, the Maine Central, and the Bangor and Aroostook with the New York Central. That would obviously be in keeping with the purpose of the statute, the merging of weak roads with a strong system. But objections are urged: (1) the size and preponderance already of the New York Central in trunk line territory. (2) It would cut down competition in New England, since the New York Central is already through the gateways of Mechanicville and Rotterdam Junction. It would cut down competition in Massachusetts from three railroads to two. (3) It would disturb existing routes and channels of traffic because the Boston and Maine interchanges more with the Delaware and Hudson than with the New York Central. It would then be thought that a merger of the Boston and Maine with the Delaware and Hudson and the Erie would be logical. But again New England would not do well to risk an important though necessitous road with so obviously weak a system as the Erie.

Definite proposals are offered, if it should be that the Commission would prefer the trunk line plan for New Eng-

land: "That the Boston and Maine Railroad be consolidated with the proposed Erie System, and that the Maine Central and the Bangor and Aroostook should be consolidated with the New York Central, connection therewith being obtained over the rails of the Worcester, Nashua and Portland Division of the Boston and Maine." This arrangement would draw upon the financial strength and surplus equipment of the wealthy New York Central, it would give Portland three competing systems and comply substantially with the purpose of the Federal statute.

But the scheme preferred in the report is to create a comprehensive system out of the carriers of New England, "preserving only such domestic competition among them as shall satisfy the demands of the statute." It is proposed that the New Haven, the Boston and Maine, the Maine Central, and the Bangor and Aroostook be grouped into a local system, reviving the policy once pursued under the Morgan-Mellon administration of the New Haven. The Boston and Albany and the Central Vermont would be relied upon to supply local competition. The outstanding advantage of this plan would be its freedom of interchange with connections from every part of the country. Another major advantage would be a consistent administration of the different gateways, in order among other things to avoid congestion locally. An earnest and able argument is made in behalf of this plan of grouping.

The objection that the group plan for New England ignores the preservation of competition is met by the statement that it preserves as much competition as exists under present conditions, and also that it would enable New England to compete with other sections of the country, and thereby preserve market competition. Not so satisfactory an answer is made to the objection that all New England lines are weak financially, and grouping them is not placing the weak with the strong. It is recommended that drastic reorganization be made. "No other course seems open except the adoption of vigorous measures for setting the New England house in order, recognizing past mistakes and

pocketing the losses, and then proceeding with confidence to set up a new organization which shall have such assurance from public reputation of straightforwardness and honesty that the invincible power of New England's associated capital and industry shall loyally support the enterprise."

No doubt such heroic measures would aid many another transportation situation. Perhaps such action widely taken would remove the occasion for consolidation, or at least go far toward satisfying those who expect to save weak roads through consolidation.

IV

The report contains a chapter on what the author is pleased to call the Chesapeake region or the lake-to-tide and soft coal region. There are three railroads based upon Hampton Roads in the lower Chesapeake Bay. They are the Chesapeake and Ohio, the Norfolk and Western, and the Virginians. They reach Trunk Line territory and in some measure compete for Trunk line business. They specialize in carrying soft coal and coke from the mines in West Virginia and Kentucky. In a striking paragraph the mission of these roads as seen by the author of the report is set forth: "The technique of coal-road operation especially sets off these properties from those of the Trunk Lines. The coal is produced from numerous mines in these limited areas and is gradually collected by an elaborate system of lines into through trains, which move either to tidewater, to the great lakes at Toledo, or to central distributing points like Cincinnati, Chicago, or Columbus. From these centers this coal is transported to numerous destinations in the Middle West and the Northwest. The gathering of this fuel from the mines, its transportation in solid trains to the central distributing points, and its subsequent delivery at these points—either to vessels for water transportation or, in relatively small quantities, to various connections—

¹*Ibid.*, p. 525.

constitute a complete transportation operation. It requires highly specialized equipment and methods of operation, which are essentially different from those of other railroads. These processes of coal transportation have been perfected through many years. Main lines of the highest standards, exceptional equipment as to capacity, networks of feeders, extensive yards and terminals, and highly specialized machinery for rapid and economic unloading, have been provided. The demands for this specialized investment have prevented encouragement of or participation in either passenger or other freight business than the carriage of bituminous coal. Such general traffic is bound to be secondary. It should not interfere with the efficient and economical operation of these roads as coal properties. To add a great volume of general traffic would confuse the situation. No attempt should be made to create general trunk lines out of these roads; but they should be treated nevertheless as national assets, having in view their general usefulness to the entire country and to all of the other railroads. Occasionally, perhaps, a road, like the Norfolk and Western, may be used to relieve congestion on the more direct lines from the Atlantic seaboard to Chicago, but that is not its main function, nor may the Chesapeake and Ohio be regarded primarily as other than a highly specialized coal property."

In this discussion the future of these soft coal roads is set forth as it is viewed in connection with the other carriers. It is thought that the Norfolk and Western and the Virginians should be combined and that that property with some extension would furnish another lake-to-tide road. The Chesapeake and Ohio would be its competitor. These would be relatively small systems, rendering a highly important, but rather specialized service. The one great obstacle is that the Pennsylvania controls the Norfolk and Western through stock ownership. The report expresses doubt as to the powers of the commission to sever such stock relationships.

The problem of and the desirability of getting the Chesa-

peake and Ohio into St. Louis is discussed. After pointing out the obstacles to such a program, it is said "the desirability of a future trunk line to St. Louis from Hampton Roads, by independent construction cannot be doubted." This is a refreshing statement. For it recognizes that we have not yet reached the fullness of industrial and commercial development; that much is yet to be done even in the East.

V

The report deals in chapter 4 with the carriers of the Southeastern region; that is, territory south of the Ohio and Potomac Rivers and east of the Mississippi. This area shows several conditions in sharp contrast with Trunk Line territory: (1) population is sparse; (2) traffic is light and somewhat seasonal in character; (3) there is a small quantity of local business; (4) much of the tonnage for a long haul consists either of products such as cotton, lumber and vegetables northbound, or food stuffs and manufactured articles southbound; (5) there was at one time wide spread water competition, the effects of which are still noticeable; (6) a number of corporate relationships have grown out of the influence of the numerous rivers and the encircling seaboard; (7) most of the railroads have come into this region either from Trunk Line territory or from the sea ports such as New Orleans, Savannah, and Charleston. The following geographic conditions have profoundly influenced railway development in the Southeast: (1) the presence of the Alleghany mountain range dividing the region down the middle from the northeast toward the southeast almost as far as Atlanta; (2) the presence of rivers and sea coasts; (3) the great areas of land suitable to cotton culture; (4) extensive timber lands; (5) mineral resources, particularly coal; (6) the development of citrus fruits and the cultivation of vegetables. The report sets forth that there has been great development in the Old South since 1900: population has grown; there has been increase of traffic in lumber, in agricultural products, and particularly in the intensive development of Florida. The east half of the Old South and

the west half have become mutually more dependent upon each other.

Of great importance to the Southeastern states as well as to the Southwest and the Middle West, is the future development of the Gulf ports and the South Atlantic ports. This is especially true since the building of the Panama Canal. There is a growing interest among manufacturers in the Mississippi Valley to move their products through the southern rather than the eastern ports. The report also might have added that there is considerable development in manufacturing in the Southeast.

Some of the railroads serving this territory present peculiar problems to those charged with consolidating groups: (1) There is the Illinois Central which operates on both sides of the Mississippi River. It is the short line from the lakes to the gulf and runs through most fertile territory. While its main stem is east of the river, it yet has important extensions into western territory. Then, (2), there is a western road, the St. Louis and San Francisco which has a branch from Memphis to Birmingham. This extension into the east is of great importance to the Frisco, since it reaches the coal fields and industrial area of Alabama. It is recommended, however, that it might be severed and allocated to some southeastern system.

The following groupings are suggested for the Southeast: One built around the Southern Railway and including the Southern Railway, the Mobile and Ohio, the Alabama and Vicksburg, the New Orleans and Northeastern, the New Orleans and Great Northern, the Georgia Southern in Florida, and the Carolina, Clinchfield, and Ohio. Another built around the Louisville and Nashville and the Atlantic Coast Line system consisting of the Louisville and Nashville, the Atlantic Coast Line, and Norfolk Southern, the Atlanta, Birmingham and Atlantic, the Georgia and Florida, perhaps the Carolina, Clinchfield and Ohio. These two systems would be competitive, both of them reaching Mississippi River gateways at St. Louis, Memphis, the Gulf ports at New Orleans and Mobile; and the South Atlantic ports at Jacksonville, Brunswick, Savannah, and Charleston. Both

of them would have the east and west halves of the Southeastern region. Then it is proposed to build a system around the Illinois Central adding to that property the Central of Georgia, the St. Louis and San Francisco from Memphis to Birmingham, the Tennessee Central, the Gulf and Ship Island, the Yazoo and Mississippi Valley, the latter already being controlled by the Illinois Central. The purpose of these additions to the Illinois Central is to give Chicago, St. Louis and Memphis access by a third route into the Southeastern Gulf states. Another Southeastern system is built in the eastern half of the region, much as the Illinois Central system was proposed for the western half of the region. It consists of the Seaboard Air Line Railway; the Norfolk and Western; the Atlantic, Birmingham, and Atlanta; the Georgia Southern and Florida; and the Florida East Coast Railroad. The Southeastern situation does not appear to have presented as many difficulties as are found in other portions of the country. In fact, consolidation has gone forward pretty well among the major roads in the Southeast. The disposition of the branch of the Frisco from Memphis to Birmingham and of the Carolina, Clinchfield and Ohio Railroad of the Central of Georgia appear to present the most perplexing problems in that area.

VI

One of the most valuable chapters in the report deals with the Western Transcontinental region. As the author of the report points out, the strategy for transcontinental traffic in western territory depends upon the supply of available through routes connecting the Mississippi River and Great Lakes with the Pacific Coast, and the number of passes through the Rocky Mountains must be decisive in determining the number of competitive groups to be recommended for the West. It is cited that seven gateways through the Rocky Mountain barriers are at present in use. These gateways have been a factor in determining the direction of the main transcontinental stems. In the three groups in the northern group are the following railroads: the Great Northern, the Northern Pacific and the Chicago,

Milwaukee and St. Paul. The middle group of gateways in Wyoming and Colorado has afforded routes for the Union Pacific and the Denver and Rio Grande. The southern gateways cross Arizona and New Mexico, and are occupied by the Santa Fe and the Southern Pacific lines. This makes seven transcontinental stems through the seven passes. It is possible that in the future some other route may be found through these mountain barriers but engineers have not yet located them. In dealing with this territory, the author of the report lays down the proposition that there must be as little disturbance as possible of existing group relationships and of the present currents of traffic.

The population as one goes westward becomes progressively more sparse. This accounts for the fact that more through lines enter each of the western cities such as Omaha, Denver, St. Paul, and Minneapolis, from the East than there are available through lines leaving them toward the West. This calls for grouping several eastern roads with a single stem crossing the mountains to the West, that is to say, on the western prairies there are railroads that do a large proportion of the business that ramifies the grain territory and which originally was projected short of the base of the mountains. Then, there are the bridge lines which cross the country through the mountain passes. These bridge lines depend upon through traffic moving in train loads and they gather very little local business. Denver is given as an example, being entered from the East by six railroads; whereas only two go out due west. Only two of these six lines coming into Denver from the East can be counted as trunk lines to be joined up with the Union Pacific and the Denver and Rio Grande which crosses the mountains to the West. Omaha offers an even more striking example than Denver. Kansas City, however, is counted more fortunate because of the number of roads leading to the Gulf ports.

There follows a discussion of why all these transcontinental systems should be based upon Chicago rather than upon the twin cities and the Omaha gateways respectively.

It is said that in as much as the Santa Fe, the St. Paul and the Illinois lines are all elected to conduct transcontinental business competitively under unified ownership clear through from the Pacific Coast into Chicago, it seems imperative that the same scope should be given to all the rest. There is mention of the recommendation that the Gulf Southwestern lines also be projected into Chicago and that such an extension of those lines would be justified in bringing the transcontinental systems to Chicago. Then certain peculiarities of transcontinental traffic are set forth in support of the proposition: (1) the large proportion of transcontinental tonnage is transported in refrigerator cars or other forms of special equipment. The Union Pacific rather objects to having one line allocated to it from Omaha to Chicago, but in its case it is shown that it handles a very heavy tonnage requiring special equipment and which is transcontinental. At Council Bluffs, for example, there were in 1920, 46,513 carloads of eggs and poultry, citrus fruits, apples, and other fresh fruits and vegetables handled by the Union Pacific and turned over to eastern carriers at Council Bluffs. Such interchange is shown to be equally as important for the Union Pacific at Ogden. The Union Pacific is considered the key log to the transcontinental jam or the clue to the plot, as it were. It has attained an inordinate strength and position as practically the only first-class direct through route from mid-continent to the Pacific Coast. Yet there is available for competition with the Union Pacific a possible bridge line, the Western Pacific and the Denver and Rio Grande. The competition over this new route would have to be prepared to face not only a perfection of operating facilities but a strength of financial resources which is almost without parallel.

The problem is to find the strength adequate to supply credit sufficient to carry through providing the Denver and Rio Grande with a low grade gateway through the Rocky Mountains. The report concludes that there are but two carriers in western territory which by reason of their financial strength and traffic interchange and the geographical location are in a position to undertake the development

and effective utilization of the Western Pacific-Denver and Rio Grande bridge. These are the Chicago, Burlington and Quincy and the Santa Fe. The Chicago, Burlington and Quincy is described as compact, closely netted within the richest territory in the United States, that it is self-sufficient, having adequate coal lines the entire length of Illinois supplying sufficient coal for company use and for fuel in some of the western states. As evidence of its financial strength, a corporate surplus of \$241,000,000 is cited. The Burlington is admitted to be first among the six roads which enter Denver from the East.

Then we have the conclusion that even the Burlington with all its sources of strength, could not be entrusted to carry the Western Pacific-Denver and Rio Grande bridge line alone for the handicap at the western end without abundant local branches or feeders is considered an insuperable difficulty. Competition with water carriers in San Francisco and the expense of developing the new gateway west of Denver, the large sums required to rehabilitate the Denver and Rio Grande impose such a burden that it is thought that even the Burlington would not be justified in assuming it. It is therefore suggested that the Northern Pacific Railroad be called upon to share with the Burlington the burden of supporting the Western Pacific bridge line. In order to provide a competitor for the Union Pacific, it is thought that an alliance between a mid-transcontinental road and one lying to the north would be necessary.

A second choice for a through system as a balanced competitor of the Union Pacific is the Atchison, Topeka and Santa Fe. Cars of fruits and vegetables could be moved by the southern route of the Santa Fe during the cold season and over the new line further to the north in warm weather. The Santa Fe has sufficient financial strength as well as operating traffic requirements to justify its taking over the Western Pacific-Denver and Rio Grande. This is in line with the desires of the Santa Fe and with plans that had been worked out by the late E. P. Ripley. The Santa Fe would be provided with an eastern and western entrance into California both at San Francisco and Los Angeles.

The author of the report concludes that the Burlington has its routes embedded primarily in the North, if it should be affiliated either with the Great Northern or the Northern Pacific while the Santa Fe is a southern line. The Santa Fe has a considerable gathering mileage now through the length of California, where the Burlington would have none. But the Burlington-Western Pacific would be much more closely parallel to the Union Pacific-Central Pacific than any combination that could be built upon the Santa Fe. Moreover, the great intensity of competition through the southern gateways by reason of the Panama Canal gives validity to the claim of the southern lines to a continued control of the northern and southern originating roads throughout California. The author concludes that it is just as essential that the Western Pacific be administered free from Santa Fe control, as that the Central Pacific be divorced from the Southern Pacific Railway Company. It is set out that if the Central Pacific remains a part of the Southern Pacific and the Santa Fe and Denver and Rio Grande are combined, the Union Pacific is not only completely eliminated from San Francisco but is also threatened both at Los Angeles and Seattle, if the Central Pacific be transferred from the Southern to the Union Pacific. This alternative jeopardizes the Southern Pacific everywhere in California by withdrawing its control of the Pacific Ogden link, while at the same time adding a new Ogden link to its rival, the Santa Fe, thus creating a new direct through line. Either of these methods of treating the Central Pacific would completely upset the competitive equilibrium. The conclusions, those of the author of the report, "are inescapable, that the Burlington rather than the Santa Fe must be charged with the sponsorship of the Denver and Rio Grande-Western Pacific route." The report therefore recommends a northern, not a southern system for both of the Ogden bridge lines, as would tend to be the most effective to produce an evenly matched rivalry all around.

Turning now to a situation as viewed from the eastern end, it is seen that since there are only three transcontinental roads in the northern group, there can be only three

northwestern through systems and if competition is to be preserved at all as the statute requires, there must be at least two. Whether there should be two or three systems is made to depend in part upon available Chicago connections suited to form stems of such transcontinental systems. Only a few such connections are mentioned: (1) the water grade Mississippi River lines of the Burlington on the left bank of the Mississippi River; (2) the St. Paul on the right bank; (3) the Soo across Wisconsin and the line of the Chicago and Northwestern system through Madison; (4) a route across Iowa provided by the Chicago and Great Western. A decision as between two or three independent competing northwestern systems is made to depend upon: (1) conditions west of the twin cities; (2) conditions east of the twin cities.

Considering the conditions west of Minneapolis and St. Paul, it is found that the Great Northern and the Northern Pacific are now allied through their joint ownership of the Burlington. For once the report emphasizes the requirement of the statute that a combination should be of weak roads with stronger ones. It is thought that to leave the Hill lines as allies would be too much for the St. Paul. This is a situation in the Northwest similar to the Northeast where the New York Central competes with the Erie and the Nickel Plate. It must be observed that there was no recommendation that the New York Central be burdened with any appreciable mileage of those weaker competitors. However, in the Northwest the statute is invoked and the report sets out very clearly that it would be difficult to comply with the law and combine two strong transcontinental lines against the weakest of the three. It is therefore recommended that the St. Paul be united with either the Great Northern or the Northern Pacific. After some discussion the three system possibility is dismissed on grounds of balanced competition, geographic location, and financial requirements of the roads involved. It is also thought that two northwestern systems would better preserve a balance of power among all the other transcontinental roads. The union of the Northern Pacific with the

St. Paul is rejected on the ground that the two roads are competitive and such a consolidation would run directly counter to the terms of the statute for at present most of the stations for several hundred miles are common points on the two roads. It is recommended that the Chicago, Milwaukee, and St. Paul be consolidated with the Great Northern because, they not being competitive locally, are somewhat supplementary. Their main stems are far enough apart to give comprehensiveness to the system as a whole. Then the Great Northern is regarded as more able financially to support the St. Paul. It is proposed that the St. Paul-Great Northern system be strengthened in the West by the allocation to it of the Spokane, Portland, and Seattle, and at the eastern end this combination should be given the Chicago, Terra Haute and Southwestern; and the Chicago, Milwaukee and Gary is proposed as an outer belt line for this system to meet the outer belt line of the New York Central in order to avoid congestion in Chicago.

Matched with the Great Northern-St. Paul in the north-western system would be the Northern Pacific, Burlington system, this system, having been assigned the Denver and Rio Grande and Western Pacific, would compete with two other transcontinental systems, that is with the Great Northern, St. Paul in the Northwest and the Union Pacific in mid-continent.

It is proposed to put the Union Pacific into Chicago by way of the Chicago and Northwestern and into St. Louis over the Wabash. It is also proposed that the division of the Chicago Great Western from Des Moines, to Kansas City be severed from the parent company and merged into the Union Pacific system. There is a review of the objections both legal and economic to an unmerger of the Central Pacific from the Southern Pacific. It is decided that such reasons as public opinion in California, the disturbance of rates by the unmerger of the Central Pacific from the Southern Pacific, the historic corporate inter-relations between the Southern Pacific and the Central Pacific must give way to what the author of the report considers the larger national interest and the Central Pacific be merged

with the Union Pacific so as to put a third system into California and to balance the Burlington-Rio Grande-Western Pacific line.

Discussing the effect upon the Southern Pacific of the amputation from it of the Central Pacific the remark is made that by no means all of the tonnage that has passed over the Central Pacific in interchange with the Southern Pacific will be lost to the Southern Pacific.⁸

It is suggested that the undeveloped area in and about Southern Oregon should fall to the Union Pacific and Burlington-Northern Pacific systems rather than that it should be developed by the St. Paul-Great Northern system. It is recommended too that the Union Pacific be admitted to Seattle. The above mentioned proposals are justified in the following statement: "To recapitulate, therefore, the grand strategy is to produce a combination which shall cover California, Washington, and Oregon with a competitive and financial power equivalent to that of the Union Pacific group,"⁹ that is the alliance between the Denver and Rio Grande and Western Pacific and the Northern Pacific and Burlington. To strengthen the St. Paul-Great Northern against the power of the two great middle systems, to-wit, the Union Pacific-Northwestern and the Burlington-Northern-Pacific, it is proposed to merge with the St. Paul the Minneapolis, St. Paul and Sault Ste. Marie Railway, commonly known as the Soo. It is thought that the Soo system will bring strength because at the time the report was written, it ranked above the average financially.

Turning now to the southern part of this region a merger of the Chicago, Rock Island and Pacific Railway with the Southern Pacific Company is unreservedly recommended so as to match almost point for point the Santa Fe system. Certain supplementary changes are recommended making the correspondence of the two systems even as to details somewhat extraordinary.

Such a combination would derive much strength from its

⁸*Ibid.*, p. 588.

⁹*Ibid.*, p. 592.

composite origin. The Southern Pacific has unparalleled extension throughout California, and many of its advantages could never be duplicated by competing roads. On the other hand, the Rock Island is well entrenched, it possesses the shortest line between Chicago and Des Moines and Chicago and El Paso and between St. Louis and Kansas City and El Paso. It has the shortest line from Kansas City to Denver and from Kansas City to St. Paul. It has great strength in branches and feeders throughout Kansas, Nebraska, and Iowa. It possesses unusual terminal facilities at Chicago. Being one of the earliest western roads, it was able to obtain valuable property in the heart of the city. It has a line of terminal properties on the lake front and cuts across every trunk line having direct physical connection with the lake front. It also reaches across a rich country to Memphis, through Oklahoma and Arkansas, and sends a line to the lumber district of Louisiana, there making a connection with the Southern Pacific into New Orleans. This description is sufficient to show how the Southern Pacific-Rock Island system would compete with the Santa Fe. Moreover, such a combination would give the system a somewhat balanced traffic, the Rock Island being a Granger road and the Southern Pacific deriving much of its revenue from moving California fruits and vegetables. If the wheat crop fails in Kansas, the fruit and vegetable crop may be good on the Pacific coast and vice versa. In order to connect Memphis with St. Louis, it is proposed to utilize part of the Cotton Belt from Binkley, Arkansas up to Illmo at the Thebes bridge head. It is proposed to appropriate a part of the Burlington in order to give the Rock Island a connection north of St. Louis up the Mississippi Valley. A number of minor changes and additions are suggested in order, as the report puts it, more perfectly to match this system with the Santa Fe. It seems that considerable pains are taken to shape up an excellent system around the Southern Pacific-Rock Island. The report reveals an appreciation of the needs of these carriers and definite suggestions for meeting them through grouping particular lines that manifests a keen appreciation of the necessities and opportuni-

ties of the major portions around which this grouping is supposed to be built.

The Atchison, Topeka and Santa Fe system is described as one of the most compact, complete, and financially well-balanced railroads in the United States; a monument to the sagacity of the late President Ripley and his associates. It is said that a combination of intelligence and courage made such provision that the system reaches almost every point that it should and has such connections hither and thither as to consolidate its strength at all strategic points. No energy is dissipated by useless or unnatural extensions beyond its natural gateways. It is cited as an example of the principle that net mileage, that is to say, mileage which counts, is of more value than a mere heterogenous aggregation of more or less ill connected parts. The Santa Fe system forms roughly a huge triangle with one corner at Kansas City, another in Texas behind Galveston, and the third corner not far from Santa Fe, New Mexico, at Belen Junction. From each corner there are lines out to strategic gateways. The main line runs northeast into Chicago, to the south the line reaches the Gulf of Mexico at Galveston, and might be extended to New Orleans; and the main line runs straight from the western angle at Belen Junction to Los Angeles and San Francisco. To the northwest there is also a line into Pueblo and Denver. As to further needs of the Santa Fe, it is suggested that it should have an entrance into St. Louis. Several possible ways by which to enter St. Louis are suggested. Second, it is proposed that the Santa Fe should be put into New Orleans in order more evenly to match competition with the Southern Pacific. Of the three possible roads that might be utilized for such a purpose it is recommended that the portion of the Gulf Coast lines from DeQuincy east be merged into the Santa Fe system and that the remainder of the Gulf Coast lines west of State Line, Texas, be assigned to the Missouri Pacific. It is pointed out, however, that there is no unity of opinion within the Santa Fe management as to the desirability of entering into New Orleans. The report, however, is rather positive that the Santa Fe should go on to New Orleans in spite

of the fact that it would tend to reduce market competition.

The author of the report finds some difficulty in disposing of the Colorado Southern properties composed of the Colorado Southern, Fort Worth and Denver City Railway, and the Trinity and Brazos Valley. These are owned by the Burlington with the exception of the Trinity and Brazos Valley, which is owned jointly by the Burlington and the Rock Island. There are suggested four possible dispositions of the Colorado Southern properties. One is that the Burlington system be permitted to keep them. This idea is dismissed with a wave of the hand, as it were. Another is that they should be merged with the Santa Fe in an effort to build up a middle group transcontinental system around that road. This too is rejected. A third possibility would be to incorporate the Colorado Southern system in the Southern Pacific-Rock Island group. This too is rejected as not being necessary to the routing out of that system. The fourth proposal is that it be placed with the Missouri Pacific. This is recommended because merging the Colorado and Southern with either the Santa Fe or the Rock Island-Southern Pacific would leave the incentive to work business by the southern rather than by the middle routes. For the Colorado and Southern in either hands would afford a short-haul through Denver as against a long haul through Arizona. Such disposition it is thought, would tend to dry up a competitive artery. It is also suggested that the Union Pacific and the Burlington are entitled to participate competitively in this business. The conclusion is then reached that the Colorado and Southern should be in neutral hands and the Missouri Pacific seems to the author of the report, preferable to all of the others.

The proposals for western territory must be tested, it is said, first as respects the continuance of competition and second with regard to the uniformity of earning power. A series of maps are submitted in an attempt to show graphically that competition would continue over the recommended groupings. Then there are statistical studies which purpose to indicate the degree of uniformity of financial return. The significant statement is made at the conclusion

of the chapter that not until financially checked by valuation is anything approaching precision possible in the way of a check or test.

VII

Chapter 6 of the report deals with the Southwestern Gulf region. As chapter 2 on the New England region was the strongest of the report, chapter 6 appears to be the weakest. The explanation perhaps is that the author of the report has a more intimate and accurate knowledge of the New England region than of other parts of the country, though his knowledge of all portions of the country is that of a thorough scholar and foremost economist. As one reads chapter 6, if he has a knowledge of the Southwest, he cannot avoid the impression that the treatment is in places somewhat arbitrary. In chapter 5 the Southwestern-Gulf region was included as a part of the western transcontinental territory, particularly in the discussions of the Rock Island, the Southern Pacific and the Santa Fe. Having worked out eastern and western transcontinental systems denying to all of them Gulf outlets, with the exception of the Southern Pacific and the Santa Fe, which for years have been in the Gulf ports, attention is then given to the lines from Missouri River gateways into the Southwest and to the Gulf. The report deals with these roads separately and recommends that they be grouped into two somewhat local systems rather analogous to the recommendations made for the lower Michigan peninsula and somewhat comparable to recommendations for separate treatment of the New England lines. The territory that the author of the report is pleased to call the Southwestern-Gulf region is by no means so distinct geographically as is the lower Michigan peninsula, or New England. There are no mountain ranges, no great lakes, no natural barriers, separating this region from the rest of the country.

The region is defined as a sector lying between the Mississippi River and the main lines of the Santa Fe and the Southern Pacific-Rock Island transcontinental systems, meaning here by the main lines of the Santa Fe, the wes-

tern lines from Kansas into New Mexico. It is further described as being bounded on the north by the Missouri River, between St. Louis and Kansas City and upon the south by the Gulf and Mexican frontier, or the report might have said the Rio Grande River. The territory is divided east and west by the Ozark Mountain range and its foothills extending from Southern Missouri nearly across Arkansas; that is to say, Northwestern Arkansas, Eastern Oklahoma, and Southern Missouri, are occupied by these highlands, though they are crossed by fertile valleys such as that of the Arkansas River. These hills constitute no such barriers as do the Alleghany Mountains in Trunk line and Southeastern territory and certainly are no such factor as the Rocky Mountains in transcontinental territory.

The following objections are made concerning the territory and the carriers operating therein: The railroads in the Southwestern-Gulf region possess certain characteristics in common. The more important lines are based upon Kansas City and St. Louis in so far as they have been built from the north down. They are nearly all dependent likewise upon their relation to the Gulf ports. They have had in the past a certain interest in transcontinental traffic and have been utilized by the Southern Pacific for connections through to the Missouri River gateways. Traffic conditions all throughout the Southwest-Gulf region are said to be fairly uniform: "Naturally there are no manufacturies and carriage outward consists of the products of the territory. Inbound, there is the lesser volume of manufacturies and supplies which are consumed by the population. The principal earnings of these roads arise from the carriage of grain, shading off into the carriage of cotton and lumber from the southern and southeastern portions, the movement of petroleum, and the handling of coal from mines in this region. It is pointed out that the yield of grain is becoming less, that timber cutting has gone so far as to represent an exhaustion of resources. On the whole the plight of the Southwestern lines is considered such that it is said "only by holding them altogether, abandoning where absolutely necessary lines which may be dispensed with, can a construc-

tive policy be pursued to the end," and "one is driven to the conclusion that a general rearrangement of these roads segregating them into two competing systems in order to conform to the requirements of the act, is the proper course to pursue."

Another characteristic mentioned is the very large amount of mileage which still remains in independent hands, there being a number of local properties varying in length from 100 to 300 miles. Another general feature of this region is that there are "too many railroads to be supported by the available traffic." This is said to be due in part to the railway promoter who has found in the Southwest the last and most inviting field for the practice of his art. That the field should be inviting would indicate that the resources of the country are such that the investment might ultimately prove profitable but the inference from the report is that the promoters were mistaken and that in the Southwest is a peculiar situation requiring special treatment at the hands of the commission. Yet some of the very roads complained of in this report, published in 1921, have out of earnings expended millions of dollars for betterments and improvements within the past three years. No such capacity for self-help is recognized in the report and from a reading of this chapter one would never have prophesied the splendid performance of such roads as the International-Great Northern and the Texas and Pacific, to mention but two instances.

Another peculiarity of the Southwestern-Gulf situation and one which accordingly introduces an element of confusion into all statistical comparisons, is a separate incorporation and accounting of the railway lines located in Texas. One infers from the discussion of this so-called peculiarity that the commission is being encouraged to further Federal incorporation.

It is considered that the Southwestern carriers have some part in transcontinental business, though it is said they are "not naturally large factors." But "they are properly called upon to perform an important function for the nation as a whole through engaging in long haul business to

and from the Gulf ports to the Missouri River gateways. They are the necessary outlets for the entire country west of the Mississippi River; and construction of the Panama Canal, and our recently developed national marine interests are bound to emphasize still further the import and export feature of the Southwestern-Gulf traffic." It is thought that the systems should not be deprived of their air lines which might serve the transcontinental carriers, because the withdrawing of such air lines would further weaken carriers that are on the whole now in financial difficulties, most of them have been through several bankruptcies and reorganizations. It is not suggested that the weak gathering lines too might be merged with these stems into the powerful transcontinental systems and thus comply with the terms of the statute. Instead, we have the proposal that roads considered so weak by the author of the report as to constitute a peculiar problem and to require special treatment are to be grouped together to form weak systems in the same territory as such giants as the Santa Fe and the Southern Pacific-Rock Island. The geography of the country is cited as a reason for not merging the Southwestern lines with the Santa Fe and the Rock Island-Southern Pacific. Not much attention is given to the possibility of calling upon the Burlington and the Union Pacific to share with the Santa Fe and the Southern Pacific the burden of the weak lines of the Southwest. The statement is made that neither the Frisco nor the Missouri Pacific could be incorporated in transcontinental systems, but no sufficient reason is given in support of that assertion. It is concluded in the report that two systems should be built in the Southwest, one around the Frisco and the other around the Missouri Pacific. Then it is decided to extend each system into Chicago. This would have the effect of modifying conditions arising out of these roads having been based upon Kansas City and St. Louis. There is an interesting comparison between Southwestern and Southeastern roads in order to show that the Southwestern roads should be given access to Chicago, whereas those of the Southeast should be denied such an entrance, the principal reason being that

in the Southwest there are already two systems, the Santa Fe and Rock Island which reach Chicago. The fact that St. Louis and Kansas City are primary markets and that the Southwestern roads need the long haul that extension to Chicago would furnish are given in support of the proposition. There is an apparent reluctance in the report to recognize that the Rock Island, the Southern Pacific, and the Santa Fe are Southwestern properties in the sense that they as truly serve the Southwest as do any other lines operating in that region. Then follows a description of the two systems as Professor Ripley recommends them: first, the St. Louis San Francisco railway system with 5,252 miles is taken as the nucleus for one of the two proposed purely Southwestern systems. Then it is proposed to include the Missouri, Kansas and Texas with its 3,863 miles of first main track. There is a curious inaccuracy in describing the Katy and the Frisco lines from Denison to Dallas, Texas.¹⁰ These two systems, the Frisco and the Katy, are competitive all the way from St. Louis into Texas. Then, it is proposed to place a competitor of both the Katy and Frisco, the St. Louis Southwestern Railway, or such part of it as is not needed by the Rock Island-Southern Pacific group, in this combination. This group is to be put into Louisiana over the Louisiana Railway and Navigation Company and to somewhat compete with the Kansas City Southern. In the Missouri Pacific it is suggested that trackage be provided for the Frisco, first over the Texas and Pacific from Shreveport to Texarkana and from that point on over the Kansas City Southern to Hartford Junction, where the main line of the Frisco would again be reached. It is said "this would bring utilization of the Kansas City Southern as the country develops and through traffic increases may conceivably in time lead to the bringing of a parallel bridge line across this district." This is a rather large concession in view of the emphasis laid upon the Southwest being so much over-railroaded. For a more direct line to Galveston than the Katy affords, it is suggested that the Trinity and

¹⁰*Ibid.*, p. 623.

Brazos Valley be tied into the system, or as a possible alternative, the Houston, East and West Texas, which connecting with the Cotton Belt at Lufkin, would furnish a rather direct line to Houston and Galveston. The Kansas City, Mexico and Orient is a necessitous road from Wichita, Kansas, southwest into Texas as far as Alpine on the Southern Pacific. It is proposed to divide it at Altus, Oklahoma, and give part of the line across Texas to the Frisco and the remainder to the Missouri Pacific. The Frisco in order to strengthen itself in North Louisiana, it is suggested, should have the Vicksburg, Shreveport, and Pacific running east and west between Shreveport and Vicksburg, the part of this line east of the river having already been allocated in the discussion of Southeastern roads to the Southern Railway. Though these Southwestern lines are regarded as financially weak, it is proposed to merge the Chicago and Alton with the Frisco system for the purpose of letting the system into Chicago.

Turning now to the proposed Missouri Pacific system which is recommended to balance the suggested Frisco system, we find the statement that the Missouri Pacific in 1918 operated 7,008 miles of line of which it owned in fee about 6,800 miles. A weakness of the Missouri Pacific is considered the sharp separation on the two flanks of the Ozarks between western and southern halves. These are at present united by two long bridge lines running northwest and southeast across the Ozarks along the valley of the Arkansas River. It is suggested that the Missouri Pacific should have the Kansas City Southern to furnish it the shortest possible route to the Gulf. The Kansas City Southern also would, it is also thought, lend financial strength to the Missouri Pacific. It is further proposed that the Kansas, Oklahoma, and Gulf road be included in this system and the Louisiana and Arkansas from Alexandria to Hope, Arkansas. It is definitely recommended that the Missouri Pacific be forbidden access to the Pacific Coast and confined to the Southwest and based upon the Gulf of Mexico. Since the Missouri Pacific has a line to Denver, it is proposed that the Colorado Southern and Fort Worth and Denver City

should be included in the Missouri Pacific system. These roads too would further add financial strength to the Missouri Pacific. Having made recommendations that thwart the long-time ambition of the Missouri Pacific, to reach the Pacific coast, recommendations are made to strengthen the system on the Gulf. Among these is that the southern half of the Gulf Coast lines from Beaumont be assigned to the Missouri Pacific, the Santa Fe getting the Gulf Coast lines east of DeQuincy. In connection with access to Houston, it is suggested, though not urged, that the Missouri Pacific have traffic rights over the Houston, East and West Texas. In order to give this system access to Chicago, it is recommended that the Western, Chicago and Eastern Illinois be incorporated with it. This recommendation is made, even though at the time the report was written there was heavy interchange by the Missouri Pacific and the Chicago and Alton. The chapter ends by citing statistical studies that indicate that the two systems as proposed might be very well balanced as to financial returns, though the returns predicted are discouragingly so low as compared with those of the competitors, the Santa Fe and the Southern Pacific, as to suggest that such systems might perpetuate rather than solve the problem of the weak roads, for rates that would be necessary to sustain these two Southwestern systems would likely be more than sufficient for the stronger competitors, while rates that would yield a fair return to the strong roads in the Southwest would perhaps result in bankruptcy for these two local systems.

VIII

The last chapter of the report is a recapitulation, it being both an argument for the plans above outlined and for consolidation. The object sought in the discussion above is stated to be as follows: "An inherently natural geographic scope for each system; a sound operating adaptation of each unit to its surroundings, due consideration being given to the nature of its traffic; administrative practicability, that is to say, a size under each particular set of circumstances, commensurate with capacity in manage-

ment; an ever-present competition between rival roads, in order to secure the continuance of an alert and accelerated service to the public, assuming that the foregoing physical arrangements have already provided economic carriage by each competitor; and such an equalization of earning capacity between these competitors, as to perpetuate such rivalry in service on an even-handed and wholesome basis." It is also said that these requisites for a consolidation plan must be combined with the least possible disturbance of existing corporate integrity. Existing corporate integrity, it is thought, must be respected first because consolidation will probably be voluntary and second, that the existing physical instrumentalities such as division points, round houses, residences of employees and the like have been coördinated very closely with the present corporate structure. It is very interesting to note that in the recapitulation the economies of consolidation are emphasized and so important do such economies appear to the author of the report that he even suggests the possibility of government ownership in order to obtain them in the event that voluntary consolidation should not take place.

In the report we find twenty-one systems recommended, five within Trunk line territory, two lake-to-tide soft coal systems in the Chesapeake Bay region, four in the Southeast, seven in the West, five of the western systems being termed transcontinental, and two described as running southwest toward the Gulf ports. Then in addition to these there are three outlying regional groups, one in New England, one in the Southern Michigan peninsula, and one down the east coast of Florida toward Cuba. A characteristic of the plans reported is that they be based upon the great ports like New York, New Orleans, Galveston, San Francisco, and Seattle, and in the heart of the country, particularly Chicago and St. Louis are regarded as nodal points.

The Trunk line and Eastern systems are all based upon Chicago and St. Louis in the heart of the country. These plans would have the effect of making the great cities greater, and would tend to intensify the centralization of indus-

try and commerce at a few places. Whether or not this is desirable socially and politically is certainly a mooted question. Is it better that we have a few cities of from a million to several millions population where much business will be concentrated, or should there be a wider distribution of business activity among a great many small cities? This report answers this query in favor of the large cities.

The systems proposed range from 2,761 miles in case of the Chesapeake and Ohio, there being three others about the same size, up through 5,000 and 10,000 miles even to 20,000 miles each. The financial test of the feasibility of the twenty-one systems is said to be applied in a table on page 640. It would be recognized that the test is very inadequate and not at all such as the statute seems to require, but it is of course the best that could be done in a report prepared as was this one within a short time and largely by a single individual. But this test reveals quite a variety in the percentage relation of net operating income to investment, ranging from 3.23 up to 6.18. This variety is also emphasized on page 642 in the table showing the ratio of present value to recorded investment which ranges from 38.54 to 125.33. The last part of the report deals with the advantages of consolidation.

THE BOARD OF CONTROL IN TEXAS*

CALEB PERRY PATTERSON
University of Texas

The Board of Control in Texas is an expansion of a State purchasing agency established in 1899, the first centralized State purchasing system established in the country. It was inadequate from the beginning and soon broke down in face of the rapid increase of the State's institutions, from 13 in 1899 to 26 in 1918.

The system consisted of an agent at a salary of \$2,000 a year, a clerk at a maximum salary of \$1,000 a year, and a set of country merchants acting as distributors and checkers of supplies, practically uninstructed. Its inefficient control over deliveries was its chief weakness. Substitution of inferior quality, short-invoicing, favoritism, duplication and high prices were impossible to prevent because of the inadequacy of the system. By 1918, its yearly purchase amounted to \$2,000,000.

By 1917, dissatisfaction with the purchasing agency, as well as with the administration of other departments of the State government, led to the appointment of a General Investigating Committee by the Legislature. This committee found that the practice of the purchasing agent had been to spend all the money on hand whether or not it was needed. They found that one institution had enough tooth-picks to build a fence around the Capitol; another enough hot water bottles to supply all the hospitals of the Nation; a third enough shoe strings to make an Atlantic cable. The result of the investigation was that the committee recommended the abolition of the purchasing agent and the establishment of a State Purchasing and Managing Board to consist of three members, to purchase all the supplies for State institutions with the exception of perishable goods and technical instruments.

*Paper read at the annual meeting of the American Political Science Association, Columbus, Ohio, December 29, 1923.

Acting on these recommendations the legislature of 1919 created the Board of Control, consisting of three citizens of the State appointed by the governor "by and with the advice of the Senate" for a term of six years at a salary of \$5,000 a year and traveling expenses. The governor may dismiss the members of the board at any time for "good cause," the reasons for such dismissal to be specified and filed with the Secretary of State.

The purpose of establishing the board was to put more business into government. It was recognized that the principle of administering large business units under centralized control to effect efficiency and economy applied with equal force to governmental affairs. It was thought that a board giving all of its time to the study and administration of the State's institutions would exercise more careful supervision than innumerable boards whose members are preoccupied with their personal affairs and who only occasionally meet to consider the welfare of the institutions under their control.

The work of the board is distributed among the following divisions:

- (a) Division of Public Printing,
- (b) Division of Purchasing,
- (c) Division of Auditing,
- (d) Division of Design, Construction and Maintenance,
- (e) Division of Estimates and Appropriations.

Each division is in charge of a trained executive who has had prior experience in the particular field in which he is to serve. Partisanship has practically been eliminated from appointments under the Board of Control. The board is given very broad powers of organization and procedure. It can add divisions and subdivisions and employ such help as it needs.

Flexibility of the System

The flexibility of the Texas system, which is one of its admirable features, is especially true of the purchasing division. The broad powers of the board for determining

purchasing procedure are largely responsible for its success. The board may call for competitive bids, waive bids, buy in the open market or establish a list of supplies upon which it is not necessary to receive bids. Requests for bids are sent directly to the vendors as well as advertised for in the newspapers.

The board may enter into long term contracts or purchase from day to day on a falling market. The latter method requires a prodigious amount of work, but has been practiced on several occasions with considerable economy resulting.

Methods Used by the Board

Requisitions for supplies are made by the various institutions for a twelve-month period on a basis of the previous year. Supplementary requisitions are certified by the heads of the institutions, approved by the board and then consolidated by the Division of Purchasing to determine the aggregate needs of the State in each community. The quality of samples is tested by chemists and experts who are also used to check the quality or quantity of delivery against the samples.

All orders are approved by the board before being issued. Copies of orders are sent to the vendor, the Division of Auditing and to the using agency. Deliveries are checked with the sample by the using agency and also by the Division of Auditing in some instances. All invoices are certified by the using agency that the goods have been received and checked by the Division of Purchasing for quantity, quality and price extension against order, and rechecked by the Division of Auditing before being passed to the Comptroller for payment.

Some of the chief benefits derived from such a central purchasing system are its certainty to detect errors in extensions and footings, its prevention of payment of the same bill twice, transfer of surplus from one institution to another, and the great economy effected by buying large

quantities. The purchases of the board approximate \$4,000,000 annually.

The Division of Public Printing handles all the stationery and printing requirements of the State, aggregating about \$400,000 annually. The board widened the bidding from that of the total supplies to any single item. This secured low bids on many items which some firms were peculiarly fitted to handle. It is estimated that the board saves the State \$100,000 annually on printing.

A uniform system of bookkeeping and accounting has been installed with the central office of the board. The books of all institutions are audited from time to time. There are six types of monthly reports which are made by the various institutions covering the whole range of their activities. This enables the board to make comprehensive summaries and comparative estimates on the workings of the State's institutions.

The Division of Estimates and Appropriations

The Division of Estimates and Appropriations is the budget agency of the State. This agency has presented two budgets to the legislature for the bienniums of 1921-23 and 1923-25. The institutions under the Board of Control asked \$39,903,342.42 for the biennium 1921-23 and the board recommended \$25,456,586.20, reducing the original request by \$14,446,756.22. For the biennium of 1923-25 the same institutions asked \$42,043,586.25 and the board recommended \$30,795,332, eliminating approximately \$12,000,000.

The Policy of the Board

The policy of the board is well stated in its first annual report, as follows:

While economy and retrenchment have been important considerations, they have not been the sole determining factors in arriving at the recommendations contained in the budget. The relative needs of the departments and insti-

tutions were kept constantly in mind and diligent effort was made to avoid the impairment of the public service, the crippling of efficiency or the throttling of proper growth and development.

It should not be understood that all eliminated items are, in the judgment of the board, unnecessary and out of harmony with the real needs of the departments and institutions requesting them, for many of them carry abundant merit, and with perfect propriety could have been included in the board's recommendations, were it not for the fact that to have included them would have forced the sacrifice of other items which the board regarded of greater importance. In fact, one of the difficult problems which continually confronted the board was to determine the relative value of the several items and make recommendations upon a consistent and quitable basis.

In practice the legislature has substantially followed the recommendations of the Board of Control. There has been a constant tendency for the institutions under the board to appeal to the legislature for larger appropriations. This on the whole has failed. It has more frequently resulted in cuts in the appropriations recommended by the board. The educational institutions lost \$2,000,000 for the current biennium by not accepting the board's budget. The educational institutions have demanded a lump-sum budget to be expended by their respective boards rather than an itemized, fixed budget which could not be changed by their own administrative authorities. There seems to be a tendency in all the states for the educational institutions to resist budgetary control despite the insistence of the departments of government in these same institutions that the rest of the state should live under a budgetary system. This exception is defended on the ground that very different conditions prevail in the educational institutions of the State from those found in regular government service. Apprenticeship, a high degree of specialization, teaching ability, research expertness, and power of discipline are required of the college man. These qualities are not found in the open market and universities are in competition with each other for men and women having these attainments. The state governments of the country are not bidding against

each other for employees. The basis of employment in the university is constantly shifting and only a flexible system can meet this condition.

The Board of Control has been a very helpful agent to the state government in furnishing scientific information as the basis for taxation and appropriations. The legislature has not the time to gather this information while it is in session. It is reasonable that a set of experts can make a better budget in two years than a legislative committee regardless of its ability, can make in ninety days. If the sole function of the board were to prepare the budget as so much information for the legislature, it would many times pay for itself.

The Board of Control has not been free to use its full influence in determining the budget. As appointees of the Governor, they feel naturally disposed to consider his recommendations as to budget, employees and general policy. On the other hand, some member of the legislature is ready to threaten their abolition if they do not properly care for the State institutions in his district. The board cannot be independent in the preparation of the budget nor can it defend it after it has been presented. Like Kipling's man, it is in neither hell nor heaven.

To give the board the independence and the power needed, it has been suggested that it be given a constitutional position and be popularly elected. The theory is advanced that the board then would be able to withstand pressure from any source by simply pointing out that it owed its position to no individual or group of individuals, but to a State-wide constituency.

This proposal would simply further divide the problems of government between popularly elected officials and thus make still more impossible the problem of coöperation between departments of the government. Responsibility of a technical department to the people means nothing, because the electorate cannot enforce such a responsibility. This problem is a bigger proposition than a mere budget system, and cannot be properly solved until a better relation between the governor and the legislature is established.

Until this is accomplished, no executive budget system will have much weight with the legislature.

My proposal is a reconstruction of State government along the lines of a responsible cabinet system of government with a small unicameral legislature, from which the heads of departments should be chosen. The party in power should be made responsible for the administration of the government and the merit system should characterize its service. The treasury department of the administration should be the central agent in the preparation of the budget. In case of a deadlock, a referendum to the electorate should decide the policy of the government. Probably the government of the provinces of Canada would come as nearly being a model for American State government as any experiment already performed. Of course, certain changes are obvious such as an appointed Governor to an elective official, but in respect to legislature, budget system, and relations of legislature to executive, it is an experiment that should be carefully studied by Americans.

Until there can be established a direct contact between the administrative and legislative departments in American State government, there can be no effective supervision of State administration. It should be primarily the business of the representative element to supervise. When it is not furnished this opportunity, the representative element is tremendously weakened, and the administration plays fast and loose with the electorate.

My contention is that it is not enough to establish a centralized budget system. This is a step in the right direction, but it will prove ineffective if not dangerous unless it is followed by the establishment of a supervising agency. This is only the application of a recognized principle of business that all agency must be constantly and effectively supervised. This supervising agency should be the representatives of the electorate rather than the electorate. They should have the opportunity to question the administration as to its policy on the legislative floor as a means of exposing its policy to the purifying influence of public opinion. This is the crux of the entire problem—the establish-

ment of a proper working relation between the administrative and legislative departments. The solution of this problem can be approached by a study of the arrangement existing between the executive and legislative branches of the Provincial Governments of the Dominion of Canada or it could be modeled after the relation existing in the Swiss National Government between the Executive Council and the Federal Assembly.

Until this problem is solved, the history of State government in the United States will be a record of inefficiency and extravagance interspersed with such dishonorable and opprobrious administrations as Sulzer's in New York, Ferguson's in Texas, Walton's in Oklahoma, and McCrary's in Indiana.

THE MOVEMENT FOR THE CODIFICATION OF THE LAWS OF MARITIME WARFARE

HOWARD M. GREENE*

*West Texas State Teachers' College
San Marcos, Texas*

THE MEANING OF THE TERM

Law in the form of a code is by no means a new conception. The Ancients developed a type of municipal code. Moreover, the origin of the idea of a codified international law, at least as embodied in the dreams of philosophers and idealists, may be said to date from a comparatively early period in modern times. But with the development of international law to the stage it had obtained by the close of the second of the Hague Conferences the movement for its codification gained momentum. Yet writers on the subject of codification, both advocates and opponents, differ among themselves as to the meaning of a code. Hence, before undertaking a study which has codification for its theme, it will be well to attempt to lay down a definition of the term.

Since municipal law developed to the codifying stage earlier than did any part of international law, one is prone to think in terms of municipal law. As used in this field, however, there is a wide variation in the use of the term "codification." Some authors emphasize one, and some other aspects or factors involved in the process. But after all, perhaps it is through the presentation of definitions of a municipal code that a proper conception of an international code can best be gained.

When used in a very narrow sense, having regard primarily for the *content* of the code, and applied to the laws of an individual country, a code is the "unwritten or case law" of that country reduced to statutory form.¹ As used in

*Carnegie Fellow in International Law, University of Illinois.

¹Woolsey, Theodore S., *Practical Codification of International Law*. Edited in 1916 A. J. I. L., p. 423.

a broader sense, having regard for the *authority* which forms and gives force to the codified instrument as well as for its content, a code is a "general system of law, embodied and authorized by legislative authority,"² or "a collection of articulate and definite rules or statementsgenerally purporting to proceed from a definite authority."³

A more complete definition, however, one which not only describes the process of codifying municipal law, but throws light on the problem of international codification, is taken from Webster's Universal Dictionary and it reads thus:

In modern jurisprudence (a code is) a complete and coördinated body of law, approved by legislation and arranged under public authority, in which the laws enacted and to be specifically applied by the courts are set forth in a brief manner and according to their relation to each crime or condition. There is neither deviation or latitude. Thus a true *code* is not only a concise arrangement of existing laws, but it also substitutes new provisions and brief instructions for those existing laws which have seemed contradictory or inefficient.

Obviously, from the standpoint of the machinery which performs the task and the power behind the instrument after it has been given form, because of the lack of any single constituted authority under which the work must be done or a single legislative body to approve it or a court to apply it after it is laid down, this definition is not altogether descriptive of a code of international law. Yet, from this standpoint, by conceiving a number of more or less independent authorities acting in concert as an instrument for laying down the law and approving it by common agreement, and the somewhat crude international machinery already in existence as an instrumentality for applying it after it is laid down, as an institution roughly paralleling the municipal court, it may be made to fit the international situation fairly accurately. Moreover, since a great part of the so-called rules of international law is of such doubtful authority, rests upon such uncertain and partial acceptance

²Stimson's Law Dictionary.

³Pollock, Sir Frederick, *A First Book of Jurisprudence*, p. 15

by governmental authority, or upon such vague and unsatisfactory evidence of usage⁴ the development of international law to meet changing conditions has been less satisfactory than the development of municipal law and the question of its codification, from the standpoint of the selection of rules to be embodied, presents a problem at once broader and more complicated than is found in the field of national law. This idea is present in Oppenheim's explanation that⁵

Naturally a codification (of international law) would in many points mean not only an addition to the rules at present recognized, but also the repeal, alteration, and reconstruction of these rules,—modification and additions as are necessitated by the conditions of the age and the very fact of codification being taken in hand.

Yet, as Prof. Garner points out,⁶ this is the part of the work of codification of international law over which there is considerable disagreement. He explains that to solve the problems of selecting material for a code of international law, some would limit the work to the statement of existing rules of law—the Austinian conception of codification which is limited to the “re-expression of existing law”—while Mr. Root and others would go beyond this point and include in a code new rules which would seem necessary to meet the variety of new situations and relationships which have resulted from the changed conditions of international life due to recent progress in science and invention. The latter conception, Prof. Garner remarks further, is the broader meaning and problem of the codification of international law.⁷ This has been the experience of the makers of the greater municipal codes and is, therefore, no innovation to suit the international situation.

Hence, in addition to the principle that any code should

⁴Root, *Proceedings of the American Society of International Law*, 1911, pp. 20-21.

⁵*International Law*, Vol. I, pp. 46-47.

⁶Lecture, *Progress Towards Codification*, p. 69.

⁷Cf., also Root, 5 *A. J. I. L.*, p. 579; Reinsch, *Proceedings*, 1910, p. 37; Octavis, *Proceedings, Second Pan-American Scientific Congress*, Vol. III, p. 34 ff; and Nages, *Ibid.*, p. 29.

have to be accepted by nations individually in order to give it the character of law, codification of international law may be said to embrace three stages or processes. The first process is the putting into written form, properly coördinated, and with obsolete rules eliminated, principles of law upon which there is substantial agreement among the nations. The second stage consists in the clearing up of points upon which the nations are not in accord, and the third in the making of additions to the rules of international law, filling the gaps which will inevitably occur, so as to adequately meet new conditions which have arisen. Logically the codification of international law might be limited to the first process only, or it might include the second stage and no more, or, finally, it might embrace all three of the processes. Unless it is otherwise indicated, the term will be used in this paper in the broadest sense.

INSTANCES OF ATTEMPTS AT CODIFICATION: AGENCIES,
AIMS, METHODS, AND RESULTS

The question as to whether international law is to be left to develop and establish itself through custom or whether other agencies are to be given a large share of the work, is perhaps as old as the nations themselves. Since a comparatively early date in modern times, private individuals and associations of such individuals and statesmen working with the consent of or under instructions from their governments have interested themselves at different times with schemes and projects looking towards the codification of international law. In most instances the work done by these individuals, societies, or even governments, is now of little more than historic interest. Yet, as will be pointed out, all the various agencies engaged in the work from time to time have in the long run, made notable progress on the parts of the work undertaken. Hence the world now has both a public and a private international law in a partial state of codification.

Efforts by private individuals in modern times philosophically to frame a code of international law may be dated

from 1786-1789. During this period Bentham, "the great legal reformer of modern times,"⁸ wrote his *Principles of International Law*, which consists of four essays dealing with the following subjects:

1. Objects of International Law.
2. Subjects for the present extent of the dominion of the law.
3. War considered in respect of its causes and consequences.
4. A plan for a Universal and Perfected Peace.⁹

In 1825 James Mill published a treatise in which he recommended that the preparation of a code of international law be entrusted to a body of delegates representing the various nations. Soon afterward Frederick Seeböhm wrote his *Reforms of the Law of Nations*, advocating a code of international law.¹⁰ Then in 1827 Don Estéban Ferrotter, a Spanish author, published a treatise consisting of a kind of code based on a collection of the treaties between Spain and other nations, that is, based on a somewhat narrow conception of the common law of nations.¹¹

Parado, an Italian jurist, in 1851 published a project of a code of private international law which takes into consideration such matters as maritime law and questions of sanitation;¹² and in the following year Louis Bora's work entitled *La Science de la Paix*, was published. In this work the author "proposed, above all, to assimilate international legislation, and to establish amongst the nations the same rules of justice which reason and science have already es-

⁸Wheaton, Henry, *History of the Laws of Nations*, quoted by Nys., 5 A. J. I. L., pp. 877-878.

⁹Nys, *Le Droit International*, Vol. I, pp. 169 ff; *Proceedings*, 1910, pp. 214 ff; and Wheaton, Henry, *History of Law of Nations*, pp. 328 ff.

¹⁰Garner, *op. cit.*, p. 4; Nys, 5 A. J. I. L., p. 281.

¹¹Nys, 5 A. J. I. L., p. 882. The full title is *Código de derecho internacional, o sea una colección metódica de los tratados de Paz, Amistad, y Comercio entre España y las demás naciones*.

¹²Garner, *op. cit.*, p. 4.

tablished amongst the members of each national community."¹³

Ten years later, Dr. Alphonse de Domin-Petrushevecz, an Austrian, published a little book, *Précis d'une Code du Droit International*. He had the idea that a universal code should be undertaken by an international commission.¹⁴ About the same time that this author was setting forth his ideas as to a plan of procedure, the Russian, Dmitri de Ivanovich Katchenovskiy, was advocating another plan. In two papers read in 1858 and 1862, respectively, before the Juridical Society of London, Prof. Katchenovskiy insisted upon a general codification of international law, to be undertaken by the jurists of all the nations.¹⁵

From 1868 to 1910 several much more comprehensive projects of international codes were set forth by individuals. In the former year, Johann Caspar Bluntschli, scholar, publicist, philosopher, historian, and journalist, published his *Das Moderne Völkerrrecht der Civilisirten Staaten als Rechtsbuch Dargestellt*, consisting of three parts and over eight hundred articles. In this work the author undertakes to limit himself to the formulation of "simply the existing ideals of the civilized world."¹⁶

In 1872 Mr. David Dudley Field published his *Draft Outlines of an International Code*, consisting of over a thousand articles. Being a lawyer and having had experience in the codification of municipal law, Mr. Field had an intimate knowledge of legal principles. This is clearly reflected in his code. He was not so theoretical as were his predecessors. He limited himself to rules in actual practice, and his code embraced the entire field of international law. The project,

¹³Nys, 5 A. J. I. L., p. 884.

¹⁴*Ibid.*, p. 885.

¹⁵Annual Report of Director for the Division of International Law to the Executive Commissioner of the Carnegie Endowment for International Peace; papers read before the Juridical Society, 1858, 1862, pp. 99 ff; and 553 ff. Also Nys, 5 A. J. I. L., p. 886.

¹⁶Nys, 5 A. J. I. L., pp. 887-888.

however, has been criticized as over-expressive of the American point of view.¹⁷

A still more voluminous project is that of Fiore, an Italian jurist. The work is entitled, as translated into English, *International Law Codified*. It consists of almost two thousand articles. The plan and purpose of the code are set forth by its author thus:

".....We propose to set forth international law, taking into account the existing law and such rules as may be capable of becoming law. In other words, we intend systematically to formulate the body of rules which consists in part of those accepted by the states in general treaties, in their legislation or in diplomatic documents, and in part of those rules found either in the popular consciousness which have manifested themselves in our time, or in the common thought of scholars and the most learned jurists. As a natural consequence, the rules systematically assembled in the present volume represent in part present international law, and in part the international law of the future. As a whole it comprises the system which, in our opinion, is calculated to endow international society with a legal organization."¹⁸

Thus Fiore goes a step further than Field, and is at least more outspoken as to his method and intentions than is Bluntschli, for he avowedly sets forth a code, consisting not only of principles of international law as recognized at the time, but of principles which should be in the law, or which will be "international law of the future." Yet Fiore did not believe that all of his code could be promulgated at one time. He thought, further, that parts of international law could and should be codified and promulgated at a time, and in the end all could be coördinated into a unified whole.

The most elaborate work of this kind, however, is that of the Canadian jurist, Jerome Internoscia, entitled *The New Code of International Law*, and published in 1910. It

¹⁷Annual Report of Director of Division of International Law, etc., p. 247; Nys, 5 *A. J. I. L.*, p. 886; and Garner, *op. cit.*

¹⁸Garner, *op. cit.*, p. 8.

contains 5,657 articles and is published in English, French, and Italian. Representing prodigious efforts, it is one of the last attempts of an individual to work out a code of international law. The purpose of the author is to assist in finding a way to avoid war.¹⁹

As might have been expected, even if none of these projects has been accepted by the nations, the efforts of individual jurists and publicists, made on their own accord, towards the work of codifying the law of nations has not been wholly barren of results. These men exerted influence on private societies which in turn encouraged individual initiative on the part of other philosophers and all these agencies taken together have furnished bases for official governmental action. In 1858, and again in 1862, Ketchenovsky's papers before the Juridical Society of London interested that body in the problem of codifying international law.²⁰ A few years earlier, Luis Bara received a prize offered by the Congress of Friends Universal Peace for his work which was published in 1852.²¹ In 1866, Field was appointed by the British Association for the Promotion of the Social Sciences as one of a committee which was instructed to prepare the outlines of an international code of laws. The committee as such accomplished nothing, but, as mentioned above, Field himself later produced his *Draft Outlines of An International Code*.²²

In addition to the two societies just mentioned, numerous private organizations have in different ways contributed to the movement for the codification of international law, both public and private. Among these may be mentioned The Society for the Judicial Settlement of International Disputes. The Inter-Parliamentary Union—a quasi-governmental organization—the various Pan-American Scientific Conferences, numerous International Law Associations, International Association for Labor Legislation, the Inter-

¹⁹Garner, *op. cit.*, pp. 9-10.

²⁰Nys, 5 A. J. I. L., p. 886.

²¹*Ibid.*, p. 884.

²²*Ibid.*, p. 886.

national Maritime Committee, and the Institutes of International Law.

From the work of some of these societies, appreciable results have been attained. The International Law Association, from October 10, 1873 to 1895, called the International Association for the reform and codification of the laws of England, has done a great deal for the cause of codification. In the "reunion held at New York by the Committee," the first step in convoking the conference at Brussels was made.²³ And during the Stockholm session of the Universal Peace Conference, August, 1910, a project of a Code of Public International Law was taken up for consideration, preparatory to the submission of it to the government as a basis for the work of its *Commission d' Etude* for the use of a Third Peace Conference.²⁴

The organization which has rendered the most constructive service to the cause of codification is the Institute of International Law.²⁵ The society was organized at Ghent, September 11, 1873, and from the very beginning of its existence has emphasized the desirability of codifying international law. At the time of its organization friends to the cause of codification were in evidence. On this occasion Stanislao Pasquale Mancini, then teacher of law at the University of Rome, said:

We hope to codify, if not for all, at least for some, the rules applicable to international relations, and substitute, at least with regard to the majority of nations, a system of judgment in conformity with the law in place of blind chance of force, and for the useless spilling of human blood.

Article I of the Constitution of the Institute provides for "giving assistance to every serious attempt at the gradual and progressive codification of international law,"²⁶ and, says Nys,²⁷ "It may be said that the Institute has kept its

²³Nys, 5 *A. J. I. L.*, pp. 889-890.

²⁴*Ibid.*, p. 891.

²⁵Garner, *op. cit.*, p. 12 ff.

²⁶Garner, *op. cit.*, p. 4.

²⁷5 *A. J. I. L.*, p. 889.

word, has been consistent in its policy." Its numerous works have constituted, along several lines, veritable small codes, and the two peace conferences at The Hague profited by the wise decisions made in these particular branches of the law by the Institute.²⁸ Indeed Mr. Root has stated that without the work of the Institute the success of The Hague conferences would have been impossible.

Among the more important accomplishments of the Institute in the way of arranging in scientifically prepared codes, the different branches of international law may be enumerated the regulations for international arbitral procedure in twenty-seven articles in 1875,²⁹ a manual of the laws and customs of war on land consisting of seventy-eight articles, 1880,³⁰ international regulations for the navigation of rivers, consisting of forty-eight articles, 1887,³¹ international regulation on the admission and expulsion of aliens consisting of forty-one articles, 1892,³² regulations concerning the status of ships and their crews in foreign ports in time of peace and in time of war, consisting of forty-six articles, 1898,³³ and a manual of naval war governing the relations between belligerents, consisting of 116 articles, 1913.³⁴ The latter code was made in anticipation of its use by a third Hague Conference.³⁵

The method of procedure in the preparation of the manuals of land and naval warfare, as well as all the other proposed codes by the Institutes, and the character and reputation of the jurists composing the membership of that body have served to recommend its projects to governments, international conferences, arbitral tribunals, and national

²⁸Garner, *op. cit.*, p. 12 ff.

²⁹Text in *Annuaire de l'Institut de Droit International*, Vol. I, p. 120 ff.

³⁰*Ibid.*, Vol. V, p. 157 ff.

³¹*Ibid.*, Vol. IX, p. 182 ff.

³²*Ibid.*, Vol. XII, p. 218 ff.

³³*Ibid.*, Vol. XVII, p. 273 ff.

³⁴*Ibid.*, Vol. XXV, p. 641 ff.

³⁵Cf. Garner, *op. cit.*, pp. 12-14. Cf. also Holland, *Studies in International Law*, p. 95 and p. 89 ff.

courts. The codes of 1880 and 1913, dealing respectively with the laws of land and naval warfare, were subjects of reports and discussion by the institute as a whole at several meetings before they were adopted. The projects which resulted, therefore, are "models of conciseness, of clearness, and of style"; they are "singularly free from impracticable and purely idealistic theories," and insofar as some of their rules "may be said to go beyond the existing law as it is generally accepted, they represent the more liberal tendencies and the best juristic opinion of the day."³⁶ Neither of the projects, however, has ever received the formal approval of the governments of the world. But, remarks Prof. Garner, "Altogether it may be said that the Institute has shown the way by which codification may be best achieved and at the same time revealed the possibilities, in a degree not yet demonstrated by another organization or body."³⁷

The necessity of uniform regulations in the field of private international law has been quite as apparent as the need of a codified or definite body of public international law. "Commercial law and laws which intimately affect industry and commerce" have been found to "vary enormously from country to country," not only impeding the growth of international trade and intercourse" by causing uncertainty, loss and inconvenience," but also interfering with "the development of uniform machinery of exchange upon which the further evolution of international trade must depend."³⁸ Hence, "to further, by conferences, publications, and divers works, the unification of maritime law; to encourage the creation of national associations for the unification of maritime law, to maintain between these associations regular communication and united action," the International Maritime Committee, composed of delegates from national associations, was founded in 1898. Through the work of this committee conferences were held at Brussels in 1905 and

³⁶Garner, *op. cit.*, pp. 14-16.

³⁷*Ibid.*, p. 18.

³⁸Woolf, L. S., *International Government*, p. 270.

in 1909-10. During the last meeting conventions were adopted establishing uniform law of the sea for:

1. Indemnities due by reason of damage caused by ships, persons, or things by collision, no matter in what waters the collision takes place.
2. Conditions under which remuneration for assistance or salvage comes due.³⁹

and were subsequently ratified by most of the maritime states. Hence, the secretary of the society, says Woolf,⁴⁰ could justly claim, in 1913, "more than three-quarters of the tonnage of the world is now regulated by uniform maritime law elaborated by the International Maritime Committee."⁴¹

In 1914 thirteen of the leading Maritime powers met at London. The United States was present at this meeting, and a convention dealing with the question of safety at sea was signed. Many of the signatory governments subsequently have ratified the convention.

At the meeting of the committee in London, 1922, one of the topics for discussion was the immunity of state-owned ships. In connection with this topic a suggestion was made which, if acted upon, would constitute a very decided step towards the orderly development of a uniform international jurisprudence. It was proposed that

"Legal controversies which may arise with regard to provisions settled by such (international) conventions (as proposed) should, in order to obtain continuity and uniformity of jurisdiction, be submitted for final decision to the Permanent Court of International Justice."⁴²

Another division of private international law which has been partially reduced to uniformity is that pertaining to labor. The early movement in this direction developed in the form of bipartite treaties. At first these treaties were

³⁹*Ibid.*, p. 276.

⁴⁰*Ibid.*, p. 273.

⁴¹The plan of the work is to get nations to adopt the conventions and agree thereby to pass laws according to provisions of the convention.

⁴²*The British Year Book of International Law*, 1923-4, pp. 131-132.

made between governments wishing to protect their subjects who were emigrating to other jurisdictions to take the places left vacant by emancipated slaves. Then the same type of treaty was employed to protect home labor from foreign immigration. But in the twentieth century the bipartite treaty gave way to the multipartite type, the purpose of which has been to promote the interests of labor wherever it is employed.⁴³

After the diplomatic conference of 1890, at Berlin, had failed to make any progress in the direction of giving uniformity to laws to protect the interests of the laboring classes, in 1900 a voluntary international association for labor legislation was formed, modeling its organization and plan of work after the International Maritime Committee. The committee of this international labor organization maintains an office—International Labor Office—at Basle, Switzerland, and every two years holds its general meetings. This committee was instrumental in getting diplomatic conferences called at Berne in 1905 and 1906, respectively. At these conferences two conventions were signed. The first convention prohibits, with certain exceptions, night work for women. It was signed by fourteen governments, and these signatory countries have since enacted legislation in conformity with the provisions of the convention.⁴⁴

The second convention prohibits the manufacture, import, or sale of matches made of white phosphorus in the territories of the signatory states. Only seven powers present signed the convention,⁴⁵ but after a few years practically all of the match-manufacturing countries accepted the convention and passed legislation incorporating its provisions.⁴⁶

Aside from merely responding to requests of private organizations to call conferences for the purpose of unifying private international law, governments themselves upon their own initiative, have invited other governments to

⁴³*Ibid.*

⁴⁴*Ibid.*, p. 211.

⁴⁵*Ibid.*

⁴⁶Woolf, *op. cit.*, pp. 285-311.

send delegates to international conferences. The government of the Netherlands has been the author of such requests on several occasions. In 1893 the Dutch Government was instrumental in getting a conference at The Hague. Delegates from thirteen European states were present. The following year a second conference was held at the same place with fourteen states represented. Then, in 1902, a third conference assembled at The Hague. This time the plenipotentiaries of twelve states signed conventions dealing with marriage, divorce, and guardianship of minors.⁴⁷

Two other conferences held at the same place in 1904 and 1910 respectively, carried the work of the earlier ones forward in the sense that more states were represented and more conventions were signed. In 1904 Japan was represented at the conference. At that meeting five conventions were signed, the most important of which is the one of civil procedure which has been subsequently ratified or adhered to by all the states of Europe except Turkey, Greece, Bulgaria, Servia, and Montenegro.⁴⁸ In 1910 the conference undertook the study of bills of exchange with the view to adopting a uniform system for Europe. Two projects were elaborated and signed by twenty-seven states. The first one is entitled a "Convention on the Unification of Law Relative to Bills of Exchange and Promissory Notes." The second convention enumerated the matters with respect to which the states may depart in their legislation from the first convention.⁴⁹

"As a result of the work of these conferences," remarks Prof. Garner,⁵⁰

A considerable part of Continental European international private law has been unified and a common procedure for the application of foreign law has been agreed upon. The task of unification and codification of international private

⁴⁷Garner, *op. cit.*, pp. 55-56; 25 *Revue de Droit International*, p. 521 ff; 468 ff; and 36 *Revue de Droit International*, p. 516 ff.

⁴⁸Garner, *op. cit.*, p. 56; also 33 *Revue de Droit International*, p. 569 ff.

⁴⁹Garner, *op. cit.*, pp. 56-7.

⁵⁰Garner, *op. cit.*, p. 57.

law has been less difficult than the codification of international public law.⁵¹

From this acknowledgment of the difficult nature of the problem of codifying public international law, however, it is not to be inferred that nothing has been done in this field, aside from the compilation of various projects by well-meaning theorists and societies composed mainly of philosophers. Practical statesmen have found it to be of advantage to have certain of the rules of international law, in particular those relating to warfare, reduced to definite written form. These instruments, promulgated by individual governments, of course, do not have the validity of an international code of laws; but they represent the issuing nation's conception of what the rules of warfare really are, a necessary preliminary to any satisfactory work of codification.

It is sometimes said that the United States took the lead in issuing these manuals of the laws of warfare. During the Civil War the government found itself with large armies in the field, composed mainly of untrained volunteers and commanded by officers ignorant of the laws and customs of civilized warfare. To meet the deficiency President Lincoln charged Francis Lieber with the task of framing a code of the laws of war on land, entitled *Instructions for the Government of the Armies of the United States in the Field* and issued as "General Order No. 100." "From the beginning to the end," says Bluntschli⁵²

they contained general rules relative to international law in its ensemble; the form in which they were expressed corresponded with the existing ideas of humanity and the manner in which civilized peoples made war; their influence extends far beyond the boundaries of the United States; and they contributed powerfully to fix the principles of the laws of war.⁵³

More specifically, as Dr. Scott remarks, this code or manual

⁵¹For the history of the whole movement for the codification of private international law, cf. *Columbia University Studies*, Vol. 91, No. 2.

⁵²*Droit International Codification*, tr. by Lardy, p. 6.

⁵³Quoted by Garner, *op. cit.*, p. 20.

formed the basis of deliberations at the Conference of Brussels in 1874 and influenced indirectly the two Hague Conferences.⁵⁴

The rules contained in this code remained in force in the United States until 1914, when they were revised and amended so as more adequately to meet the conditions of the times and issued in a new manual called "Rules of Land Warfare."

The American example of 1863 was soon followed by the European governments. Such ordinances were promulgated by the Netherlands in 1871,⁵⁵ by France in 1877 and again in 1913, by Switzerland in 1878, by Servia in 1879, by Spain in 1882, by Portugal in 1890, and by Italy in 1896.⁵⁶ The British government issued such manuals in 1882, 1908, and 1914, and in 1902 the German governments promulgated its *Kriegsbrauch im Landkriege*, prepared by the German General Staff and setting forth the General Staff's conception of the doctrine of military necessity. Unlike the British, French, American and other manuals, the German code disregards the Hague Conventions almost entirely.⁵⁷

Among a number of codes which were issued in conformity with the obligations imposed by the Hague Conventions of 1899 may be mentioned those of Russia and Switzerland of 1904 and that of Austria-Hungary of 1913.⁵⁸

The field of maritime war law presents a subject on which there is a greater divergence of opinion and practice among the various nations. Unlike the laws of land warfare again, as has been noted, no international convention has been accepted by the leading powers obligating them-

⁵⁴Report of the Director of the Division of International Law, Carnegie Endowment for International Peace, pp. 247-8; Cf., also Nys. 5 A. J. I. L., p. 897.

⁵⁵The Netherlands Government sanctioned the manual issued at this time for use in the instruction of officers only. Cf. Garner, *op. cit.*, p. 22.

⁵⁶Holland, *Studies in International Law*, Chap. 4.

⁵⁷Cf. Garner, *op. cit.*, pp. 22-26.

⁵⁸Garner, *op. cit.*, pp. 28-29.

selves to conform to any definite rules of maritime warfare. Yet, just as nations have sought to reduce their conceptions of the rules of war on land to writing, so have they sought to produce for their own use manuals of naval warfare. Even before the "General Order No. 100" was issued in the United States the government of Norway, in 1860, promulgated a code of maritime law, and in 1864 its example was followed in Sweden. In the latter case, the code was rather elaborate for the earlier manuals, consisting of 323 articles. Then in 1866 the government of Great Britain took steps in the same direction. This manual was amended in 1888, but until after the Great War, Great Britain refused to revise the latter code to "bring it up to date so as to conform to the (theories of the) more recent conventions and developments in the law of maritime warfare."⁵⁹ And in 1895 the Russian government promulgated a code regulating prizes, but it was much less complete than was the British Manual.

June 27, 1900, a code "for the guidance and use of the Naval Service," prepared by Admiral (then Captain) Stockton was officially issued by the government of the United States. This manual was carefully prepared by both persons within and without the navy, and it was drawn with the hope that it "should be presented to other countries as an international project."⁶⁰ Doubtless the government of the United States felt that the rules were actually binding on it, for in 1904 the manual was withdrawn with the explanation that in case of war between the United States and another country the former would be placed at a disadvantage, since the rules were far more liberal than were those in the European manuals or than European theories and practices. Later, however, this government,

⁵⁹Garner, *op. cit.*, p. 30. In 1889 it was decided that the manual had no authority and was subsequently withdrawn. The English system of prize law rests chiefly on the Naval Prize Act of 1864, the Prize Courts Act of 1894, and various other orders in council issued thereunder. The remainder consists of judicial decisions.

⁶⁰Garner, *op. cit.*, p. 32; *Naval War College, International Law Discussions* for 1903, pp. 5 ff; and pp. 104 ff.

while a neutral in 1917, adopted another code "for the information and guidance of the Naval Service."⁶¹

The Italian Government in 1908 adopted a code of "Rules of International Maritime Law in Time of War," based on its laws, decrees, and regulations, treaties in force, "the Hague Conventions and the usages of war."⁶² During the Turco-Italian War, however, this Italian Prize Commission denied that this code had any legal value.⁶³ However, in 1917, after the outbreak of the World War, Italy issued a new manual of naval warfare.

In 1909 the German Imperial Government promulgated a system of prize ordinances. Later these ordinances were supplemented and amended, and, in 1914 were re-promulgated by the government. Unlike the German manual of land warfare, this maritime war code follows very closely the Hague Conventions and the Declaration of London, varying from the latter in giving greater freedom to naval commanders to destroy prizes.⁶⁴ And in 1912 France issued a naval manual which was subsequently revised and amended and re-issued in 1916. The rules of this code also follow very closely the principles laid down in the Hague Conventions and the Declaration of London.⁶⁵

Following the lead of the greater naval powers, Austria-Hungary, in May, 1913, promulgated a naval manual. In the main the provisions of this manual follow the principles set forth in the Hague Conferences and the Declaration of London, but it also contains the frank admission

⁶¹Garner, *op. cit.*, pp. 35-6.

⁶²Garner, *op. cit.*, p. 36.

⁶³Coquet, "La guerre Turco-Italienne," 21 *Revue Generale de Droit International Public*, p. 107.

⁶⁴*Ibid.*, p. 37. This code has been translated into English by Huberich and King, entitled *The Prize Code of the German Empire, As in Force July 1, 1915*, New York and London, 1915.

⁶⁵After the outbreak of the war all of the Allied Powers modified their position relative to the Declaration of London. Hence, the French Code of 1916 conforms less to the Declaration of London than the former manual of 1912 did. Cf. *International Law Situations*, Publications of U. S. Naval College for 1913, pp. 169 ff, and 25 *Revue Generale de Droit International Public Documents*.

that, if necessary, regulations varying from these will be issued when the occasion arises.⁶⁶

Thus, it is seen that the manual of naval and land warfare used by the various nations individually are not binding on the nations issuing them in their international relations. It is also fairly evident that there is perhaps more uniformity than divergence in the principles set forth in the manual of the different nations. Yet there are divergencies in principles and practices which constitute a problem to be overcome if the international laws of war are to be further codified.

However, governments of their own accord have expressed desires that branches of international law be codified. On various occasions they have also shown a willingness to cooperate with other nations in attaining that end.

Numerous bilateral treaties have been made for the purpose of stating more specifically the rules of international law—a "codification" in a very material sense as between the signatory powers. Among these treaties may be mentioned an early one, more for its historical interest, however, than for anything which it achieved. In the midst of negotiations over the questions of the Armed Neutrality of 1780, Catherine II of Russia and Frederick II of Prussia in 1789 entered into an agreement which among other things provided that

at a time more or less removed from peace between the maritime powers,—(they would)—undertake to observe in the most appropriate mode, with regard to maritime powers in general, and in order to promulgate and cause to be universally accepted in all maritime wars which in the course of time, may arise, the system of neutrality and the principles established in this instrument, which shall serve as a foundation for the establishment of a universal maritime code.⁶⁷

Another attempt to begin the process of codifying the laws of nations which amounted to nothing more than a pious wish, a worthy effort, marking a stage in the evolution of the means for achieving the end then sought was

⁶⁶Garner, *op. cit.*, pp. 38-39.

⁶⁷Nys, 5 *A. J. I. L.*, p. 892.

that of Abbé Henri Gregoire of 1793. It was in obedience to a request from the National Assembly of France that the *Declaration du Droit des Gens* was prepared. Like other French revolutionary ideals, this declaration of the rights of nations was ultimately intended for all the nations. But in view of the fact that the other nations were not at that particular time showing signs of appreciation of French leadership in liberal undertakings, the Assembly rejected the Abbé's project and it came to naught at that particular stage of its development.⁶⁸

A third instance of an official expression of the desirability of a codified international law which may be mentioned is one born in America. At the instance of Bolivar of Colombia a congress convened at Panama in 1826, attended by representatives of Mexico, Central America, Columbia and Peru. An article of the "compact of perpetual union, league, and confederacy" provided for the selection of a committee of two to prepare and present to the congress the following year "a project of a code of law of the American States which should not violate European customs."⁶⁹

But the first treaty which accomplished definite results in the way of codifying the rules of international law was that which gave to the world the Declaration of Paris of 1856. The declaration was an attempt to reconcile a divergence in opinion and practice between Great Britain and France in respect to the rules regarding the law of capture and blockade. It was framed by the representatives of Great Britain, France, Russia, Austria, Sardinia and Turkey and at the outbreak of the late war it had been formally accepted by most of the nations of the world.⁷⁰

This attempt to give the world a definite system of rules for the guidance of nations in maritime war was followed in 1864 by the Geneva Convention which provided for the amelioration of the condition of sick and wounded in war

⁶⁸*Ibid.*, pp. 892-893.

⁶⁹Nys, *op. cit.*, pp. 893-894.

⁷⁰*Ibid.*, p. 895; Garner, *International Law and the World War*, Vol. I, pp. 12-13.

on land by providing certain immunities for the various agencies employed in that service. "The convention was signed by the representatives of twelve powers, and in less than four years all Europe and most of the States of America had accepted it."⁷¹ In 1869 an attempt was made to extend the provisions of the Geneva Conventions, but failed because of the lack of unanimity in their ratification. But at the first Hague Conference in 1899, these additions were accepted and the convention was extended to include maritime warfare. Subsequently, in 1906, the convention was revised and improved and in that form has been accepted by almost all of the nations of the world.⁷²

In 1868 a conference, composed entirely of military officers, met at St. Petersburg and adopted the Declaration of St. Petersburg. The object of the declaration was to regulate the type of bullets to be used in war and to lay down certain fundamental principles concerning the legitimate objects of war. The preamble to the declaration contains the statement that

the only legitimate object which states should endeavor to accomplish during war is to weaken the military forces of the enemy; that for this purpose it is sufficient to disable the greatest possible number of men; that this object would be exceeded by the employment of arms which needlessly aggravate the sufferings of disabled men or render their death inevitable.

"A large number of states," says Professor Garner, "have accepted and embodied these enlightened and humane principles in their official manuals, and the declaration was not without influence at the two Hague Conferences."⁷³

The Brussels Conference of 1874 attempted to carry forward work of the nature attempted at St. Petersburg in 1868. Unfortunately, however, at the conference great divergence of opinion developed on many points, and, due to the refusal of Great Britain to accede to the convention framed, other nations failed to ratify it. But, says Nys,⁷⁴

⁷¹ Garner, *International Law and the World War*, Vol. I, p. 13.

⁷² *Ibid.*, p. 14.

⁷³ *Ibid.*, pp. 14-15.

⁷⁴ A. J. I. L., p. 895.

the conference held at Brussels—carried out the real work of codification—(but), unfortunately during a quarter of a century it (the convention adopted) remained without binding force, and the peace conference of 1899 was required to arrive at a definite result.

As Professor Garner remarks,⁷⁵ "The work of the Hague Conferences of 1899 and 1907 marks the culminating achievement in the half-century movement whose object was to systematize, define, and codify the laws and usages of war." The first conference adopted three conventions and three declarations. Convention I provided for the pacific settlement of international disputes; Convention II, deals with the laws and customs of war on land; and Convention III, deals with the adaptation of the principles of the Geneva Convention to maritime warfare. The first declaration prohibits the launching of projectiles or explosives from balloons in time of war; the second provides for a limited prohibition of the use of asphyxiating gases, and the third provides a limited prohibition of the use of expanding bullets in war.⁷⁶ Practically all of the powers have ratified or adhered to these conventions and declarations. Hence, it may be said that the nations have adopted a code of laws regulating the conduct of war on land, and this code was in effect during the late war.

The Conference of 1907, however, undertook a great deal more than was undertaken at the Hague in 1899, but with less tangible results.⁷⁷ Thirteen conventions and one declaration were adopted, and, as was the case with the work of the First Hague Conference of 1899, most of them relate either directly or indirectly to the conduct of war. The conventions relate to the pacific settlement of international disputes, the employment of force for the recovery of contract debts, the opening of hostilities, laws and customs of war on land, and the rights and duties of neutral powers

⁷⁵*International Law and the World War*, Vol. I, p. 17.

⁷⁶Scott, James Brown, *The Hague Convention and Declarations of 1899 and 1907*, pp. 230-232; p. 41; p. 100; p. 163; p. 220; p. 225; p. 227.

⁷⁷Garner, *International Law and the World War*, pp. 18 ff.

and persons in case of such war, the status of enemy merchant ships at the outbreak of hostilities, the conversion of merchant ships into warships, the laying of automatic submarine contact mines, bombardment by naval forces, the adaptation of the Geneva Convention to maritime warfare, the right of capture in naval warfare, the creation of an International Prize Court and the rights and duties of neutral powers in naval wars. The declaration prohibited the discharge of projectiles and explosives from balloons.⁷⁸ But the "general participation" clause appearing in each of the conventions served during the late war to release the signatory powers from their obligations under the conventions because some one or more belligerents in each case had not accepted the same obligation by ratifying the conventions.

Moreover, the Hague Conference of 1907 failed to codify the law which the International Prize Court was to apply. Without such a code Great Britain would not accept the Prize Court. To meet the deficiency, therefore, the British government invited the ten leading maritime powers to send delegates to a conference at London. The delegates met in 1908 and 1909, and adopted the *Declaration of London*. The rules set forth purported to "correspond in substance with the generally recognized principles of international law," and they deal with the subjects of contraband, blockade, continuous voyage, destruction of neutral prizes, un-neutral service, and transfers of flags. The British Parliament, however, refused to ratify the declaration and as a result the work of the London Naval Conference has never been accepted formally by any nation. Hence, the declaration stands as a project of a code without legal force.⁷⁹

These are some of the agencies which for more than a century have been engaged in the work of codifying inter-

⁷⁸Scott, *op. cit.*, pp. 236-239; Cf., also index of the same volume.

⁷⁹In so far as the Declaration set forth the existing rules of international law, of course, it is binding on the nations; but it has no validity, as a code. Cf. Garner, *International Law and the World War*, p. 28 ff.

national law. They have employed various methods to accomplish the different tasks as they were taken in hand and with varying degrees of success. At first the idea of a codified international law dawned on a few idealistic philosophers. Then, generally speaking, came the private associations of these individuals and both types of agencies working together were able to impress public authorities. In this manner, therefore, many branches of international law, both public and private, have actually been codified. The questions now are, if further codification is to be undertaken, in the light of experience and reason, what agencies are best suited to do the work? Can the task be performed better by the old agencies, by new ones which have arisen since the late war, or by both working together? In other words, what is to be the method of procedure? Such are some of the significant questions which this historical survey of the efforts at codification necessarily raises.

OKLAHOMA BANK FAILURES AND AGRICULTURAL PRICES

AVERY L. CARLSON

Oklahoma Agricultural and Mechanical College

The leading types of banks in this country have been classified by Professor W. A. Scott of the University of Wisconsin, as commercial and investment banks. He defines the former as "an essential part of the machinery by which goods and services are exchanged in the every day conduct of business," while the latter are "essential parts of the machinery by which the savings of the people are collected and applied to the production and transportation of goods." With the so-called investment banks or bond houses we are not concerned in this brief investigation of the effect of prices of agricultural products on bank failures in Oklahoma during 1921 and 1922. These banks and nearly all financial institutions, other than commercial banks, deal for the most part in long-time securities. Consequently, they were only slightly affected by the fluctuations in the prices of agricultural products during this time. It is primarily to the commercial banks that our attention is directed.

All commercial banks, both state and national, do a large portion of their business on credit. President David Kinley of the University of Illinois is authority for the estimate that on the average 80 per cent to 85 per cent of the business of this country is transacted by checks and other credit documents. The volume of business that can be carried on by the use of credit paper depends primarily upon the banking facilities of the country. The prevailing practice of carrying a large portion of the banks' assets in the form of credit frequently leads to insolvency in times of rapidly declining prices. It is generally understood that a bank is insolvent when the true value of its liabilities exceeds the true value of its assets. This situation frequently results when loans are extended with insufficient capital. Insol-

vency results when the assets no longer cover the liabilities. On any balance sheet, therefore, the value of the assets is conditioned by the liabilities. The liabilities include deposits. The assets assume various forms, but the most important assets of a bank are the notes of its customers. In a solvent bank the assets are in such form as will insure meeting the liabilities promptly, especially the deposit liabilities. Now it is the special function of a bank in any community to furnish cash or credit on demand. The latter is represented by loans. Since a bank must make its profit on its loans, the natural tendency of bank administration is toward the reduction of its cash reserves to the lowest possible limit consistent with safety.

Prudence, practical experience, and sound banking policy demand certain restrictions on loans in relation to cash. Professor Irving Fisher of Yale University says that, "its (the bank's) problem in policy is to tie up enough to increase its property, but not to tie up so much as to get tied up itself." Where competition enters between banks, that bank which runs closest to the danger line in respect to the size of its reserves, without actually impairing public confidence, will make the largest profit. The natural tendency among competing banks, therefore, is to reduce reserves even below the margin of safety. Consequently, as a means of protecting the depositors, many state governments have found it necessary to provide by law more or less strict reserve requirements for their banks. In addition to governmental regulation, many clearing house associations have increased the reserve requirements of their member banks. One of the greatest differences between national and state banks in the United States is found in the reserve requirements. On the question of regulation of loans and reserve requirements, the state banking laws are, in general, more liberal than the federal laws. Furthermore, in the choice of depositaries for loans, the state banks are usually unrestricted. In Oklahoma the state banks in towns of less than 2,500 people must keep a reserve equal to 15 per cent of the entire deposits. This is the most frequent regulation for demand deposits. In many states, however, no reserve

whatever is required. In sharp contrast to the state requirements, the National Bank Act requires a reserve of not less than 7 per cent of the demand deposits and 3 per cent of the time deposits, in banks not in a reserve or central reserve city. This includes nearly all the national banks in Oklahoma.

It is a familiar fact in banking practice that in times of rapidly falling prices, the banks with a narrow margin of reserve will suffer first. This is precisely what happened in 1920 and 1921. The state banks in Oklahoma had been forced by competition and business expediency to carry the lowest reserve the law would allow, and at the same time to stretch their liberal loaning privileges to the limit. They found themselves called upon suddenly in the early part of 1921 to furnish immediate cash. They also discovered about the same time that, due to the nation-wide crash in the market prices of agricultural products, they were actually holding a large amount of farmer's collateral that was worth less than the loans it had been given to secure. This fact coupled with the additional reality that many of these farmers were facing inevitable bankruptcy complicated the situation greatly. Naturally, the banks were able to carry the burden for several months, but as agricultural prices continued on their downward swing, the farmers who were hard pressed by their debtors were forced in many cases to liquidate at a terrible sacrifice. Some of these farmer creditors went under, and took with them some of the state banks.

The national banks, on the other hand, with their short time conservative loans, most of which could be readily liquidated, did not feel the strain so severely as the state banks. Between January 1, 1921, and March 1, 1922, there were only fifty-three failures among national banks in the entire United States; and three of these were subsequently restored to solvency and permitted to resume business. These failures among the national banks were distributed as follows:

Arizona	1	Mississippi	7	Pennsylvania	1
Colorado	1	Nebraska	4	South Dakota	1
California	4	North Dakota	2	Texas	10
Iowa	2	Maryland	1	Utah	2
Idaho	5	New Mexico	1	Virginia	1
Indiana	2	Oklahoma	5		
Montana	7	Oregon	2		

That this failure rate among national banks during the fourteen months following January 1, 1921, was not unusually large is shown by comparisons with the failure rate during the twenty-five months following March 1, 1922. During the former period, an average of less than four national banks failed in the United States per month, while during the latter period 150 national banks failed, or an average of six per month.

The State of Texas with 1,039 state banks, operating under a state guaranty law had 32 bank failures between January 1, 1921, and March 1, 1922. There were three conversions of state banks to national banks during this period, and the Depositors Guaranty Fund had paid off all depositors in the failed state banks, and still had \$3,000,000 to its credit. Texas collects an assessment of $\frac{1}{4}$ of 1 per cent on the average daily deposits in its state banks to create the Guaranty Fund. The State of Iowa, on the other hand, with 1,353 state banks, and no guaranty law of any kind, had twelve failures among its state banks during the same period.

There is no denying the fact that the Oklahoma state banking system was in an exceedingly precarious condition in 1922. There were thirty-two failures of state banks in Oklahoma between January 1, 1921, and March 1, 1922. There have been at least forty-three additional state bank failures since March 1, 1922, to date, for the Oklahoma State Department now has in the course of liquidation seventy-five state banks with liabilities to depositors amounting to approximately \$11,000,000. What percentage of recovery can be expected from these banks is still problematical, since collections are proving to be slow. Furthermore, 110 state banks in Oklahoma were reorganized into

national banks between January 1, 1921, and April 1, 1924. There are now 408 state banks operating in Oklahoma, and 431 national banks. In striking contrast to the seventy-five or more state bank failures in Oklahoma since January 1, 1921, there have been only twenty-three failures of national banks. Another deplorable fact is that the Depositors' Guaranty Fund which was collected by an assessment on the capital stock, based on $\frac{1}{5}$ th of the 1 per cent of the average daily deposits has \$1,330,000 outstanding warrants issued against it. Furthermore, the ninth Legislature repealed this Depositors' Guaranty Fund, effective as of April 1, 1923. Consequently, the thousands of depositors who trusted in the fund have lost. Admittedly, this was a critical situation and was not conducive to the highest confidence in the banks.

In order to better understand the situation in Oklahoma, it is necessary to secure a short historical background. The year following Oklahoma's admission to the Union in 1907, a law was enacted seeking to protect the depositors in her state banks by means of a guaranty fund, created by a limited assessment on the assets of the banks, which was based on the average daily deposits. This striking piece of legislation became a factor in the presidential election of 1908. It was also copied by other states. The idea of the state bank guaranty law, with the mental insurance it gave depositors, proved increasingly popular in Oklahoma. In 1908, thirty national banks in this State reorganized as state banks, and the following year fifty-two national banks came under the protection of this law. By 1912, fifty-one additional national banks had entered the state banking system by reorganization as state banks.

In 1911 and 1912, the Depositors' Guaranty Law was put to a severe test by the failure of three large banks in Oklahoma City. As a result, 36 of these banks reentered the national fold, leaving a net loss of ninety-seven banks from the national banking system in Oklahoma. The Guaranty Fund of that time survived this catastrophe, and paid every cent on the dollar. The reason is exceedingly simple. The Depositors' Guaranty Fund, as it existed at

that time, was very different from the one repealed by the ninth Legislature. That fund was produced by a 5 per cent assessment, based on the average daily deposits, which levy could be increased to 7 per cent by the State Banking Board in cases of emergency. Evidently the burden of this assessment proved excessive on the banks, for in 1913 a committee from the State Bankers Association prevailed upon the Legislature to reduce the liability of each state bank to $1/5$ th of 1 per cent of the daily deposits. This was the maximum assessment allowed under the law in 1921, and explains why the Depositors' Guaranty Fund is \$1,330,000 overdrawn. Under the law as it existed in 1912, a typical small town state bank with an average daily deposit of \$500,000 could be assessed a maximum of \$35,000 a year to support this fund, while in 1921 the same bank could be assessed a maximum of only \$1,000 per year. The argument, therefore, that since the Depositors' Guaranty Fund survived a severe test in 1912 it would also survive in 1921, was clearly a fallacy. Had the legislature permitted the maximum 7 per cent assessment to remain as it was in 1912, instead of reducing it to $1/5$ th of 1 per cent of the average daily deposits, as they did in 1913, every depositor in a failed Oklahoma state bank would have been paid, and the Guaranty Fund Warrants would not be a drug on the market. However, in all probability, most of the remaining state banks would have been ruined by the assessment. From 1914 to 1921, when we were riding on a wave of prosperity, due to the World War and the accompanying inflation of the nations' currency, which carried us to "dizzy heights" in finance, the State Depositors' Guaranty Fund of Oklahoma worked splendidly. But alas, since 1921, it has failed in the time of its greatest need. While many panaceas were proposed to rehabilitate the Depositors' Guaranty Fund, the Legislature probably acted wisely under the circumstances in repealing the law entirely.

Of course, it is evident that the sudden crash in market prices, and the long continued decline in the prices of agricultural products early in 1921, had a direct effect on the banks of Oklahoma and elsewhere. This general deflation

and the accompanying liquidation in business precipitated a large number of business failures. The banks naturally suffered also. The severity of the shock in each case depended largely on how conservatively the banks had been making loans. Bankers who had loaned on agricultural security on a narrow margin, discovered one day early in 1921, that many of their loans were greater than the market value of the farmer's collateral which they held. The situation was further complicated by the fact that many of these farmers were actually insolvent. If the deflation in the prices of agricultural products had lasted a month or two, it would have caused little damage, but extending, as it has, over more than two years, the banks were forced to press the farmers for payment. These, in turn, were forced in most cases to liquidate at a big loss. After liquidation had taken place, the banks found themselves holding worthless or slow paper. This frozen condition of the banks' credit, and their inability to realize on their paper drove many of them to the wall, especially in the agricultural states. This well understood process, however, does not explain entirely why the state bank failures in Oklahoma and Texas have been so numerous and the national bank failures so few.

The national banks also were seriously affected by the crash in price levels. This was especially true in Oklahoma and Texas as well as in North and South Dakota, Nebraska, Montana, and New Mexico, where there were large numbers of failures among national banks. Oklahoma is not entirely an agricultural state. Her annual production of oil amounts to over 115,000,000 barrels. Many banks have undoubtedly felt the pressure of declining prices in this industry. Then, too, the partial failure of the 1921 cotton crop, due to the activity of the boll weevil, estimated to represent a loss of about \$24,500,000 in this state, was a serious problem for all the banks. The industry of this state, however, is general agriculture. It is variously estimated that there was a loss of over \$109,000,000 in Oklahoma, due to the decline in prices of agricultural products, outside of cotton, in 1921.

The tremendous upset in the market for farm products seems to have struck the state banks harder than the national banks in Oklahoma and Texas. This was probably due partly to the liberal loaning privileges permitted the state banks. National banks formerly could not loan directly on real estate. Since 1916, they have been permitted to loan not to exceed 50% of the actual value of land, and for a term of from one to five years only. They are forced, furthermore, by government regulation and strict inspection to loan on a broad, safe margin. Consequently, national banks were forced to adopt a conservative loaning policy. The state banks, on the other hand, are usually privileged to loan on a narrow margin of security, and during the depression following the World War, the Oklahoma state banks exercised this privilege freely. The state banks of this state have been carrying the farmers throughout the depression. In numerous cases they have evidently taken customers' notes that were refused by the national banks across the street.

State banks are essential institutions in the economic development of any state. The American national banking system was developed historically side by side with the state systems. Supplemented as they are by the greatest financial institution of the ages, the Federal Reserve System, the national banks are not complete financial institutions for any community without the coöperation of the state banks. Any agricultural community would soon find its economic and business life seriously curtailed without the latter. Oklahoma, like every other state, must have a sound state banking system to supplement the work of the national banks, and all other financial institutions. The recent experience of Oklahoma should forever be a reminder of the fact that no banking system, however popular, will ever successfully take the place of a sound, conservative, and intelligent banking policy.

WHAT IS "SUGGESTION?"

R. CLYDE WHITE

Texas Agricultural and Mechanical College

Social psychology has been slower to adopt exact terminology than general psychology. Many of its terms are popular words incapable of precise definition, or they are survivals of an older psychology. The term, "suggestion," is one of these words. It has a variety of connotations. It is used in connection with the effect of an obscene motion picture or vaudeville performance and connotes sex irregularity. A speaker or writer makes a proposition which seems probable, and it is called a "plausible suggestion." In the course of writing a book the author may in a side remark state a problem which should be investigated; he is said to have "suggested" the problem or theory. Such wide-spread and varied uses of a word render it almost useless to science. A word which has no precise definition will mean different things to different people, and a scientist using it with entire clarity to himself may convey a wholly different idea than he intends. If the word is generally recognized to have both a popular and a scientific meaning, confusion is not quite so likely.

But the term, "suggestion," is used in a variety of ways by sociologists and psychologists. They are as far from agreement on a definition as laymen. "By suggestion," says Professor Ellwood, "we mean the process of communicating an idea from one individual to another, which idea is accepted uncritically without rational ground for acceptance;" it is accomplished by "mental induction" (I. S. P., p. 229). "Induction" is not easily defined in this usage with clearness, and yet it is used to describe the process which begins with suggestion and ends with emotion or overt action. When the physicist speaks of induction, he has in mind a very definite, mechanistic explanation of the phenomenon. It may be that neuro-physiological phenomena are really mechanistic, but even then reasoning by analogy

would be inadequate as explanation. "Communicating an idea from one individual to another" is a fact, and that the idea may be accepted uncritically may also be a fact, but communicated ideas are only one class of things which are accepted uncritically by individuals. A man accepts most of the physical facts of life uncritically and it is even believed to be wicked to be critical about the established social order. So this definition of "suggestion" lacks definiteness. Unless the term be restricted to "ideas" alone, it is virtually useless, and it is a fact that psychologists do not so limit its usage.

McDougall gives the same sort of a definition as the above, but he makes it a little more general: "Suggestion is a process of communication resulting in the acceptance with conviction of the communicated proposition in the absence of logically adequate grounds for its acceptance," (S. P., p. 100). He adds that the proposition may be implied in a gesture as well as in formal language. Abnormal persons are highly "suggestible," and the "suggestibility" of normal persons varies under different conditions. According to this definition the quantity of "mental induction" is not constant; it depends upon the degree of normality, the store of knowledge, and the prestige of the source of suggestion. Conviction which results from suggestion differs from reasoned conviction in that it may be incapable of logical demonstration. That may be unquestionable, but what elements compose the "suggestion" and what is the psychological description of a conviction? These are complex conceptions. The weakness of social psychology has been that it is written about perfectly obvious facts of human society without careful analysis. This has led to the danger of talking loosely about the "social mind" or the "group mind." It is just such thinking that has often given a half mystical connotation to "suggestion." In spite of the fact that Professor McDougall warns against the "peculiar potency" of "suggestive ideas," his lack of precise definition of "suggestion" leads him into vagueness.

Among the earliest psychologists of importance in this country to make extensive use of the term, "suggestion,"

was Boris Sidis. In his book, "The Psychology of Suggestion," he has come nearer to exact definition than any of the later writers on the subject. In several experiments he discovered that in a series of letters exposed to the subject the one remembered most often was that one which was repeated frequently and exposed last. His experiment showed 75.2% efficiency. He found the conditions of normal suggestibility to be (1) fixation of attention, (2) distraction of attention from the objects of the experiment, (3) limitation of the field of consciousness, (4) monotony of impression, (5) inhibition of other ideas, (6) limitation of voluntary movements, (7) and immediate execution of the appropriate act. Several of these steps enter into the production of a hypnotic state. When the subject is hypnotized, he does what the operator tells him or starts him doing—he accepts the suggestions uncritically. Sidis has shown clearly that an unhypnotized individual is to a large degree in control of the operator, if certain steps are taken to remove as many distracting stimulations as possible. He will not only "accept *ideas* uncritically" but also very elementary stimulations, like the exposure of a letter at an aperture.

Now, the question arises, was Sidis measuring the same phenomena about which Ellwood and McDougall have written? In his book he discusses the development of what has been called the "psychological crowd" and seems to cover all that these other writers include and more besides. Le Bon has a sentence in "The Crowd" which is clearly an application of the conditions found by Sidis to be determinative of conduct: "We know today that by various processes an individual may be brought into such a condition that, having entirely lost his conscious personality, he obeys all the suggestions of the operator who has deprived him of it, and commits acts in utter contradiction with his character and habits," (p. 34, Eng. tr.). Whether or not a man "obeys all the suggestions of the operator" is doubtful, but without the cautiousness of Sidis, Le Bon is describing a similar phenomenon. What McDougall and Elwood

have to say about "suggestion" is in substantial agreement with Le Bon's usage.

Now, it will be profitable to consider what some of the neuro-physiological psychologists have to say on this subject. Sidis really belongs to this group, but, when he wrote "*The Psychology of Suggestion*," certain very useful terminology had not come into wide usage. Thorndike says: "The power of suggestion depends upon the fact that any idea does tend to result in its appropriate act, if no competing idea or physical impediment prevents it," (E. P., p. 287). That will be readily seen. But the patellar reflex can be inhibited to some extent by a "competing idea," (e. g., the deliberate attempt to prevent flexion by tightening the muscles and concentrating attention on prevention), or it can be prevented by "physical impediment," such as tying the foot down. Can a blow below the knee-cap be called a "suggestion?" Manifestly not in any ordinary sense of that word. Then, either the phrase, "competing idea" and "physical impediment," are used inexactly as descriptive phrases, or the term, "suggestion," has a different meaning from that ordinarily ascribed to it by Ellwood, McDougall and Le Bon—perhaps Sidis also. The latter alternative is more probable in view of Thorndike's extensive use of another concept elsewhere: viz., stimulus-response series.

It can be shown that any response to stimulus requires absence of stronger competing stimuli. Suppose that a man has fallen asleep in his chair at home after dinner, that he awakens and sees a box of candy on the table near him; he is not hungry, because an hour before he had dinner. But the taste sensation which accompanies eating candy is pleasant; so the parotid glands begin to secrete saliva. In the absence of inhibiting stimuli, such as remembering that candy gives him indigestion, he will eat candy—he will accept the suggestion. But why not say he responded to the stimulus? Most responses to stimuli, whether simple or complex, are modified and often reconditioned by experience. If a crowd has assembled to hear an inflammatory speech about a crime committed by a Negro and if the in-

dividuals in the crowd are indignant, when the speaker says, "Hang him! Hang him!" the crowd will accept the suggestion, if he leads, in the absence of inhibiting suggestions by a calmer man. This imaginary description is made in the conventional language of social psychology, but we might just as well substitute the term, "stimulus" for "suggestion," and the advantage would be added clearness. Take another illustration which really occurred. A man was in an automobile accident in which the car turned over. At the moment he was conscious of nothing so much as terror at what might happen. After extricating himself from the wreck, he found that the steering wheel had struck him on the side and fractured two ribs. It pained him then; his response was movements to reach a physician. But up to that time he had not responded to the stimulus of pain in the side in any self-conscious way. Probably all the writers quoted would agree that the terror excited by the over-turning car was due to suggestion. Would they agree that the pain which started the injured man to the hospital was also a suggestion? It was certainly inhibited by a stronger stimulus, or suggestion, for a time.

"The means of inducing hypnosis are many and varied, but they all consist in shoving aside extraneous thoughts and stimuli, and getting the subject into a quiet, receptive attitude, with attention sharply facused upon the operator. When the subject is in this state, the 'suggestions' of the operator are accepted with less criticism and resistance than in the fully waking state," (Woodworth, P., p. 547).

Most writers would have said "extraneous thoughts and suggestions." But Woodworth has used the neuro-physiological term, and the illustrations given above are entirely within the meaning of the term, "stimulus." In this same book (p. 549) Woodworth says, speaking of hypnosis and suggestion: "In terms of stimulus and response, suggestion works when a particular stimulus (what is suggested) arouses response without other stimuli being able to contribute to the response." In the absence of competing stimuli a given stimulus will cause a definite response. A word may be a stimulus just as anything else may be. If the

cry of "Fire!" is given by a person on the top floor of a twenty-story building, the response is just the same as if each individual hearing the cry had seen the fire, in so far as the response is concerned with escape. Words excite neurones, and the stimulus carried along an organized team of neurones ends in response, whether the stimulus be simple or complex. Neurone organization has been ascertained by reliable research, and so far as neuro-physiological psychologists know the only possible way of arousing an individual to action or thought, which is really one type of action, is by stimulating neurones to activity.

If that is the basic hypothesis of physiological psychology, it is reasonable to think that all psychological phenomena should be explained in terms germane to it. Social psychology has not taken seriously recent discoveries in general psychology, or it would have translated before now much of its terminology into terms which are capable of exact definition and which are possible of experimental verification. E. A. Ross said in his pioneer work in social psychology that his subject dealt "with planes and currents." That is an unfortunate metaphor. It says nothing definite that belongs to exact psychological language. One has to analyze a metaphor and then guess at the relation to psychology. The fact is that social psychology is just like any other psychology, except that the data are more complex. But there is no more reason for allowing careless or mystical terms to enter than there is for the organic chemist to give mystical explanations, because his data are more complex than those of the inorganic chemist. Molecules, atoms and electrons still constitute his simplest analysis, but generally he has to deal with highly complex molecules instead of the simpler atomic divisions of matter.

The scientific value of reducing the concepts of social psychology to exact terminology is obvious. It is the beginning of exact science, and social psychology has generally been anything but exact. When we have defined the concepts of this very important branch of psychology in measurable terms, we are prepared to go further and work out methods of using the knowledge of social psychology in practical life

with a greater degree of certainty. The ultimate aim of social psychology is to understand why and how human beings behave in groups or in given cultures and then to control behaviour in the interests of society. It can be studied only from the behaviouristic viewpoint; there is no such thing as an introspective social psychology, unless we are prepared to accept such imaginary concepts as the "social mind" or the "group mind."

One of the terms which needs clarifying is "suggestion." I have shown that it is a popular expression with many and varied uses, that psychologists differ widely in their use of it and that it seems incapable of exact definition on account of the many misconceptions which a particular use of it is likely to produce. If it is used, as Thorndike seems to use it and as Woodworth does use it, then it can be dispensed with and the term, "stimulus," substituted. This would rid social psychology of a vague term and start it on a line of investigation which would probably result in greater exactness. A stimulus, commonly called a suggestion, may not depend always upon individuals in close proximity but may be a creed formulated in the second century. It may be the Constitution or of the Roman Catholic Church. But it is none the less a stimulus, and the response, however complex, is within the scope of neuro-physiological psychology.

NEWS AND NOTES

EDITED BY FRANK M. STEWART
University of Texas

Dr. W. G. Cunningham, professor of philosophy at the University of Texas, and faculty lecturer for 1924, delivered five lectures at the University of Texas on the general subject of "Mind," from March 24th to 28th.

Mr. Ben F. Wright, Jr., instructor in government, University of Texas, has resigned, effective at the end of the academic year. Mr. Wright will return to Harvard University next year where he has been appointed Edward Austin Fellow in Government.

Dr. Harry A. Barth of the University of Pennsylvania has been appointed assistant professor of government at the University of Oklahoma, beginning with the fall term of 1924.

Dr. O. Douglas Weeks, of the University of Wisconsin, has been appointed instructor in government at the University of Texas for 1924-25. Dr. Weeks will offer courses in comparative government, political theory, and political parties.

Mr. Frank M. Stewart, adjunct professor of Government at the University of Texas, has resigned as head of the Division of Government Research, Bureau of Extension, and as executive secretary of the League of Texas Municipalities. He will give full time next year to teaching duties in the Department of Government. Mr. Stewart will do graduate work at the University of Chicago this summer, and will attend the second annual meeting of the National Conference on the Science of Politics at the University of Chicago, Sept. 8-12, 1924.

Dr. F. F. Blachly, professor of Government, University of Oklahoma, will be absent on sabbatical leave during 1924-1925. He and Mrs. Miriam E. Oatman-Blachly plan to spend the year in study in Europe.

Mr. Irvin Stewart, instructor in Government at the University of Texas, has been granted leave of absence for 1924-1925. Mr. Stewart has been appointed to the Gilder Fellowship at Columbia University.

Mr. Robert D. Jackson, assistant in the Division of Government Research, University of Texas, has been appointed head of the Division of Government Research, Bureau of Extension, and executive secretary of the League of Texas Municipalities.

Three members of the History Department at the University of Texas will teach in other universities this summer: Professor C. W. Ramsdell, at the University of Colorado; Professor E. C. Barker, at the University of Chicago, and Professor F. Duncalf, at the University of Michigan.

Under the auspices of the Public Lectures Committee of the University of Texas a series of lectures have been given on the general topic of "The Educated Man." Representatives of different schools have discussed the contribution of their subjects. Professor Charles W. Ramsdell of the Department of History, delivered the lecture on the place of the social sciences in education.

The catalogue of the University of Texas Summer Session of 1924 announces a number of visiting professors as lecturers in the Social Science departments: Dr. Ellis Merton Coulter, associate professor of History and Political Science, University of Georgia, Dr. Samuel Rhea Gammon, professor of History and Political Science, Austin College, Mr. Seth Shepard McKay, assistant professor of History, Ohio State University, Dr. David Yancy Thomas, professor of History and Political Science, University of Arkansas, Dr. Curtis Howe Walker, lecturer in European History, Rice Institute, Dr. Charles Henry Ambler, professor of History, University of West Virginia, Dr. Ralph Paul Bieber, assistant professor of History, Washington University, Mr. Wiley Junius Carnathan, professor of History, Southwestern University, *Lecturers in History*; Dr. Viva Belle Boothe, professor of sociology, Elmira College, Dr. Merton Kirk Cameron, assistant professor of Economics, University of Oregon, Dr. Tipton Ray Snavelly, associate professor of Economics, University of Virginia, Dr. John Ise, professor of Economics, University of Kansas, *Lecturers in Economics*; Dr. W. M. W. Splawn, Railroad Commissioner, Austin, Texas, professor of Economics; Mr. William Edward Cox, professor of Business Administration, University of Washington, Dr. William Frederic Hauhart, professor of Banking and Finance, Southern Methodist University, *Lecturers in Business Administration*; Mr. Oscar Alvin Ullrich, professor of Education, Southwestern University, *Instructor in Psychology*.

The annual conference upon Problems of Educational Administration in Texas was held at the University of Texas, April 4-5, 1924. The Texas School Survey was the leading topic for the meeting.

The twelfth annual convention of the League of Texas Municipalities was held at Paris, Texas, on May 7 and 8.

The proceedings of the tenth annual convention of the Oklahoma Municipal League have been published by the University of Oklahoma. Professor F. F. Blachly is secretary-treasurer of the League.

At the meeting of the Texas Council of Statewide Social Agencies held at Austin, March 18, three important topics were discussed: The Texas Educational Survey, Prison Survey, and a Child Welfare Council for Texas. Mr. T. H. Shelby, director, Bureau of Extension, University of Texas, presided over the Education section. Dr. George A. Works, director of the Texas Educational Survey, explained the work of the survey. Mrs. Elizabeth Speer, executive secretary of the Texas Committee on Prisons and Prison Labor, lead the dis-

cussion on the prison survey. Professor W. E. Gettys, of the Sociology Department of the University of Texas, and secretary of the Texas Conference of Social Workers, led the discussion on A Child Welfare Council for Texas.

An Association of Southern Economists and Sociologists was formed at a conference held at Birmingham, Alabama, on February 15-16, 1924. The states included in the Association are Virginia, North Carolina, Kentucky, Tennessee, South Carolina, Florida, Georgia, Alabama, Mississippi, Arkansas, Louisiana; and Texas and Oklahoma, if they care to come in. The main object of the conference is the improvement of rural economic and social conditions in the South.

The second biennial national convention of Pi Sigma Alpha Society, a scholarship society in Political Science, was held in conjunction with the fifth annual meeting of the Southwestern Political and Social Science Association at Fort Worth, Texas, March 24-26, 1924. National officers of the society for the ensuing biennium were elected as follows: Dr. Caleb Perry Patterson, Department of Government, University of Texas, president; Dr. S. W. Swenson, Department of Government, University of Oklahoma, first vice-president; Ben F. Wright, Department of Government, University of Texas, second vice-president; Charles A. Timm, Department of Government, University of Texas, secretary-treasurer. The following were named as members of the National Executive Committee: Miss Gladys Dickason, Columbia University, New York; Prof. W. E. Sandelius, Department of Government, University of Kansas, and Dr. Charles E. Martin, University of California. The officers of the society are also members of the executive committee. Pi Sigma Alpha was founded at the University of Texas in 1919 and now has chapters at the State Universities of Texas, Oklahoma, Kansas, Kentucky, and California. A number of additional representative universities have petitioned the society for local chapters. Each chapter of the society is composed of members who are honor students in Government, their election to membership in the society being on the basis of scholarship, research, and leadership.

The West Texas Historical Association was organized in April at Abilene with the purpose of preserving the history of the West. Professor Rupert N. Richardson of Simmons College was elected secretary.

Four members of the History Department of the University of Texas attended the seventeenth annual meeting of the Mississippi Valley Historical Association at Louisville, Kentucky, in May. Dr. E. C. Barker, president of the association, made the presidential address, and Professors C. W. Ramsdell, T. P. Martin, and W. P. Webb presented papers.

The twenty-eighth annual meeting of the Texas State Historical

Association was held at the University of Texas on May 15. Papers were read by Professor Samuel Ashbury of the Department of History of the Agricultural and Mechanical College, by Professors C. W. Ramsdell and W. P. Webb of the Department of History of the University of Texas, and by Mr. E. W. Winkler, librarian of the University of Texas. All officers were reelected for the coming year. Professor E. C. Barker is recording secretary and Professor C. W. Ramsdell is corresponding secretary and treasurer.

ANNUAL MEETING.—Ninety delegates and visitors, representing thirty-three institutions and organizations and five states, Arkansas, Kansas, Missouri, Oklahoma, and Texas, registered at the fifth annual meeting of the Southwestern Political and Social Science Association which was held at the Texas Hotel, Fort Worth, Texas, March 24-26, 1924. The registration exceeded by 50 per cent the attendance at any previous meeting in the history of the association. Among those participating were college and university professors of Political Science, Economics, Sociology, History, Public Law, International Relations, as well as lawyers, business men, editors, public officials, and citizens interested in public affairs.

Professor C. Perry Patterson, University of Texas, presided over the morning session Monday devoted to Public Law. Papers were read as follows: "The Limitation of Judicial Review," by Professor Herman B. Chubb, University of Kansas, discussed by Mr. Rufus Garrett, and Mr. A. M. Scott, Fort Worth; "The Relationship Between the State Legislature, Utilities Commission and the Courts in Respect to Rate Making," by Professor F. F. Blachly, University of Oklahoma, discussed by Mr. C. C. Gumm, and Mr. Willis M. McGregor, Fort Worth.

Three papers were read at the Government Section Monday afternoon, presided over by Mayor E. R. Cockrell, Fort Worth, president of the Association. Professor S. W. Swenson of the University of Oklahoma, read a paper on "The Relations Between the Legislature and the Executive in the British Self-Governing Colonies," which was discussed by Professors R. N. Richardson, Simmons College, and M. W. Graham, University of Texas. "The Effects of Separation of Legislative and Executive Powers" were discussed in a paper by Mrs. Miriam E. Oatman-Blachly of Norman, Oklahoma, which was discussed by Mr. Jack Johnson, Oak Cliff High School, Dallas. A third paper entitled "The Corporation and the Jacksonian State Constitutional Conventions" was presented by Professor Theodore G. Gronert, University of Arkansas, and discussed by Professor W. Stuart, Texas Woman's College.

Delegates were guests of Texas Christian University at a complimentary dinner given in the Administration Building at 7 P.M. Monday. President E. M. Waits presided and Mayor E. R. Cockrell

of Fort Worth made his presidential address, "The Welcome of the Cities."

At 8 o'clock in the Chapel Dr. Charles A. Ellwood, professor of Sociology at the University of Missouri, delivered a lecture on "The New Christianity." President Waits presided.

On Tuesday morning the program was devoted to discussion of History topics, presided over by Professor C. W. Ramsdell of the University of Texas. Papers were read as follows: "The Arkansas Secession Convention of 1861," by Professor T. S. Staples, Hendrix College; "The Cherokee Strip Livestock Association," by Professor E. E. Dale, University of Oklahoma; "The Revolution in Mexico," by Professor C. W. Hackett, University of Texas. A discussion on "Investigation in Local History" was led by Professor W. P. Webb, University of Texas.

"The League of Nations" was the general topic at the International Relations Section Tuesday afternoon, presided over by Professor J. P. Comer, Southern Methodist University. Papers were read by Professor John C. Granberry, Southwestern University, on "Eastern Europe and the League," discussed by Professors C. P. Patterson, University of Texas, and Charles H. Roberts, Texas Christian University; by Mr. Luther H. Evans, University of Texas, on "Some Legal and Historical Antecedents of the Mandatory System," discussed by Professor E. H. Ketcham, University of Oklahoma; by Professor O. E. Baker, Simmons College, on "The League as a Humanitarian Agency," discussed by Professor J. Doty, Southern Methodist University.

At the close of the afternoon session on Tuesday the delegates were taken for an automobile ride around the city by the citizens of Fort Worth.

"The Proposed Grouping of the Southwestern Railroads" was the subject of an address Tuesday evening by Dr. Walter Splawn, Railroad Commissioner, of Austin, Texas. Mayor E. R. Cockrell of Fort Worth presided.

Professor W. J. McConnell, North Texas State Teachers' College, presided over the Wednesday morning session, which was devoted to Economics. The program consisted of papers by Professor A. W. Jamison, University of Arkansas, on "The Development of Real Estate Courses in Universities and Colleges," discussed by Professors J. W. Ballard, Texas Christian University, and William Wales, Southern Methodist University; by Professor E. A. Buechel, Agricultural and Mechanical College of Texas, on "The Land Values and Rents," discussed by Mr. J. G. Wittmayer, Fort Worth High School, and Mr. M. H. Dirks, Fort Worth; by Professor R. H. Montgomery, University of Texas, on "The Coöperative Marketing of Cotton," discussed by Mr. L. F. McKay, American Cotton Growers'

Exchange, Dallas, and Professor V. P. Lee, Agricultural and Mechanical College of Texas.

The final session of the program was the Sociology Section Wednesday afternoon, presided over by Professor Comer Woodward, Southern Methodist University. Three different aspects of Urbanization and Industrialization in the Southwest were presented in papers by Professor W. B. Bodenhafer, Washington University, on "Population Changes in Missouri," discussed by Mr. Elmer Scott, Dallas; by Professor E. F. Bamford, Baylor University, on "Industrialization and the Mexican Casual," discussed by Professors R. C. White, Agricultural and Mechanical College of Texas, and A. C. Burkholder, Southwest Texas State Teachers' College; by Professor W. J. McConnell, North Texas State Teachers' College, on "Effects of Industrialization Upon the Negro," discussed by Professors D. F. McCollum, East Texas State Teachers' College and R. E. Sheppard, Teexas Christian University.

The annual business meeting of the Association was held in the Texas Hotel at Tuesday noon. First Vice-President G. B. Dealey presided. The minutes of the last annual business meeting were read by the secretary and approved.

The report of the secretary-treasurer on the membership and finances of the Association may be summarized as follows:

I. MEMBERSHIP

Members added during the year.....	47
Resignation (including cancellations for non-payment of dues)	39
Net gain in membership.....	8
Contributing members	7
Sustaining members	7
Active members	166
Total membership, March 24, 1924.....	180

II. FINANCES

Income

Balance, University Appropriation April 2, 1923.....	\$	46.15	
University Appropriation Sept. 1, 1923.....			500.00
Membership			
Contributing	\$	50.00	
Sustaining		20.00	
Active		351.60	
Total for membership dues	\$	421.60	
Sale of Quarterlies		90.00	
Contribution from Dr. C. G. Haines..		37.50	549.10
			<hr/>
			\$1,095.25

Expenses

Traveling	\$ 34.24	
Program Committee	1.95	
Telegram90	
Postage	64.35	
Office Supplies87	
Expressage	3.75	
Printing Quarterly		
June, 1923, 500 copies.....	\$216.50	
Sept., 1923, 350 copies.....	228.60	
Dec., 1923, 350 copies.....	198.05	
March, 1924, 350 copies.....	205.36	
	<hr/>	
Total for printing Quarterly.....	848.51	
Other Printing		
Stationery	36.52	
Program	8.75	45.27
	<hr/>	
Total Expenses		\$ 999.84
	<hr/>	
Balance for Current Year.....		95.41
Balance from Last Year, April, 1923..		223.92
	<hr/>	
Balance March 22, 1924.....		\$ 319.33

The treasurer's accounts were audited by a committee composed of Professors Wm. F. Hauhart and F. F. Blachly and were reported correct.

Professor Herman G. James's report as editor of the Quarterly explained certain proposed changes in the editorial policy for the coming year relative to annual reviews of state legislation and administration and Latin-American affairs instead of quarterly news and notes. He stated that it was the policy of the editors to accept articles from men in the Southwest in the general field of the social sciences as well as articles on Southwestern problems. The hope was expressed that the states of Colorado, Kansas, and Missouri might join the Association.

A report for the committee on financial support was made by the secretary. It was explained that some difficulty had arisen in securing contributions from institutions and it was suggested that the basis of contribution be made the purchase of *Quarterlies*. Many valuable suggestions were made in the discussion that followed and representatives of several institutions promised support.

Professor H. B. Chubb of the University of Kansas and Professor W. B. Bodenhafer of Washington University expressed their willing-

ness to act as agents to extend the activities of the Association in their states.

Officers for the year 1924-1925 were elected as follows: President, Dr. Walter Splawn, railroad commissioner, Austin, Texas; vice-presidents, Mr. G. B. Dealey, Dallas, Texas; Professor F. F. Blachly, University of Oklahoma, and Professor D. Y. Thomas, University of Arkansas, reelected; members of the executive committee, Professor E. T. Miller, University of Texas, reelected, and Professor T. S. Staples, Hendrix College.

A committee on program for the sixth annual meeting was elected to consist of the following: Professors C. W. Ramsdell, University of Texas, chairman, M. W. Graham, W. E. Gettys, University of Texas, E. H. Ketcham, A. B. Adams, University of Oklahoma, J. P. Comer, Southern Methodist University, J. C. Granberry, Southwestern University, and T. G. Gronert, University of Arkansas.

At a meeting of the Executive Committee Tuesday afternoon Professor Herman G. James was reelected editor of publications; Dr. M. W. Graham, associate editor of publications, and Mr. Frank M. Stewart, secretary-treasurer.

All members of the Advisory Editorial board were reelected as follows: Professor F. F. Blachly, University of Oklahoma; Professor C. F. Coan, University of New Mexico; Professor M. S. Handman, University of Texas; Professor D. Y. Thomas, University of Arkansas, and Professor G. P. Wyckoff, Tulane University of Louisiana. Two other members were elected on the board, Professor H. B. Chubb, University of Kansas, and Professor W. B. Bodenhafer, Washington University.

Dallas was selected as the place for the next meeting upon the invitation of *The Dallas News* and Southern Methodist University. Tentative dates were fixed for the first week in April, 1925, the exact days to be determined later by the Executive Committee.

BOOK REVIEWS

JOHN W. BURGESS. *Recent Changes in American Constitutional Theory*. (New York: Columbia University Press, 1923. Pp. xi, 115.)

ROBERT LIVINGSTON SCHUYLER. *The Constitution of the United States: An Historical Survey of Its Formation*. (New York: The Macmillan Company, 1923. Pp. viii, 211.)

Here are two books published in the same year by two Columbia University professors on somewhat the same subject, but what a contrast!

The circumstances under which Professor Burgess has written his book give it an impressiveness that under other circumstances it would hardly merit. The character, reputation, and long and useful service of the author demand that his views be taken seriously. He was born in Tennessee in 1844, and, as he reminds us, fought in the Union Army during the Civil War. Since 1876 he has been professor of Political Science and Constitutional Law in Columbia University, and since 1890 dean of the faculty of Political Science in that institution. (Now Emeritus Professor.)

The introduction is entitled: *Is Our Republic in Decline?* and the answer given in the book is that it is. Again and again he tells us that his is a thankless task and that he writes with great effort and no joy. Yet he owes it to the students he has instructed in Political Science, over ten thousand, many very distinguished. It is true that they have paid little heed to advice offered them during the World War. But this is not to be held too severely against them, for in that supreme test few have shown themselves real men. Our good land was then afflicted with weakness of character like a moral contagion. In our once free land a reign of black and sinister terror, too overbearing and too overwhelming for any but supermen to face and defy, reminds him of his youth, before 1862, when he lived in a community frenzied by secession and rebellion, and when he experienced the same withering hate and contempt, obloquy and aversion. Thus what he says is perhaps the final word from their old teacher, is presented with an astonishing display of feeling.

The Spanish War of 1898 was the turning point in our political and constitutional history. All went well 'till that date, and all has gone wrong since. At that time we had worked out a system of constitutional law and liberty which represented the furthest advance ever made by the world in political civilization. That war was unnecessary, as the ends could have been obtained by other means, but its worst feature was that it brought upon the stage of American political life the personality through whom the new generation was to have its fittest expression. Dr. Burgess was in 1906-7 Roosevelt

Professor of American History and Institutions at Berlin. Formerly he had Roosevelt as a student, and characterized him at the time "as very intelligent, though a little inclined to be superficial, impatient, somewhat conceited, honest, entirely self-reliant, generous hearted, and abnormally pugnacious." When he became President he manifested his true autocratic nature, and impregnated his followers rather with the doctrines of democratic Caesarism than with those forming the original basis of the constitutional Republic. The author disapproves wholly of Roosevelt's program of "Progressive Republicanism," realized in part at least through the methods of Roughriderism. Three significant events of his extraordinary career stand out. His seizure of the Panama district is severely condemned. His intermediation between Russia and Japan in bringing about the Peace of Portsmouth, which gave Japan a footing on the Asiatic continent, was short-sighted. Returning from Europe Professor Burgess told Roosevelt that opinion in Europe was unanimous that he had rendered a disservice to civilization, and Roosevelt was surprised and disturbed. Roosevelt contributed most to the transformation of our constitutional theory by his radical program and action of 1912.

The next step downward was the adoption of the Sixteenth Amendment to the Constitution, which is a step toward governmental control of religion, philosophy, science, thought, and artistic feeling, and even the Supreme Court has come under the spell of war and socialism. April, 1917, marks the break down of the constitutional immunities of the individual against governmental power, and the consummation of democratic Caesarism is found in the Eighteenth and Nineteenth Amendments to the Constitution, and the proposal for a League of Nations. Our government is now in principle autocratic, and the only way out is through a National Constitutional Convention. The three ways of amending the Constitution in which the Government participates should be abolished, leaving only that by conventions.

Professor Schuyler has given us a fine piece of historical work. He neither idealizes nor depreciates, but describes. His book is the substance of lectures delivered at Cambridge University and at the London School of Economics and Political Science during the summer of 1921. The book yields more than at first it promises. The manner of the author is altogether unsensational, but some of the facts brought out might prove something of a shock to Constitution worshippers. The author protests "against judicial interpretation of the Constitution by judges ignorant of its historical setting, and, therefore, unable to fathom the original intent of its provisions. Unfortunately, a knowledge of American history has not yet been made a prerequisite for admission to the Supreme Court." The Federal Convention was called solely to propose amendments to the Articles of Confederation, to be ratified by all the States; but it

disregarded instructions, assumed constituent powers, drafted a wholly new plan of government, and inserted in the Constitution the provision that it should go into effect when ratified by nine states. It was made by only one party of the people, and its adoption was the work of a party. The methods used by the Federalists in each state to secure its adoption, and the narrow margins by which it sometimes won, are described.

In the convention the provision for equal representation of states in the Senate just did get through, and if it had not, the small states would probably have withdrawn. The vote was five to four, with Massachusetts divided, and the delegates from New York having left in disgust. When Hamilton was secretary of the Treasury he advocated the assumption by the Federal Government of state debts incurred in support of the Revolution. The states that had largely paid off their debts were opposed to the scheme, and Virginia threatened nullification if the measure was passed. On the other hand, Massachusetts, with a large debt, talked of secession if assumption were defeated. Hamilton had his way by making a "deal" with Jefferson, whereby Southern votes were given in return for the location of the capital on the Potomac.

The book closes with an attempt to account for what the author calls the "cult of the Constitution." Two of the reasons are especially interesting. One refers to the "silences" of the Constitution. The makers skillfully side-stepped subjects of acute party conflict. Another reason is that for fifty years after the adoption of the Constitution the public had no opportunity of knowing *how* it had been framed. "Open covenants openly arrived at might have their advantages, but they would not make for popular veneration of the covenants." The rule of secrecy was agreed to by the delegates at Philadelphia and was observed. In 1818 Congress ordered the official journal printed, but it did not throw much light on the inside workings. Madison, however, had taken copious notes of the debates, which he was unwilling to have published during his lifetime. He died in 1836, and Congress bought his papers and published the notes in 1840. Then, for the first time, the public found out what transpired at Philadelphia.

This reviewer wonders whether those who insist that the one remedy for our political and social ills is to get back to the Constitution—of course without the recent amendments—and to study it, mean such a historical study as Professor Schuyler has made. If so, the results would probably not be what they have in mind.

JONH C. GRANBERRY.

Southwestern University.

BIZZELL, WILLIAM BENNETT. *Rural Texas*. (New York: The Macmillan Company, 1924. Illustrated. Pp. vii, 477.)

This volume, written by one who has spent his life in Texas and is

familiar with his subject both by reason of numerous contacts and by research and study, is designed to furnish an "analysis of the agricultural resources and rural life conditions in Texas." The chief impression upon one who is a total stranger to the state is that of being made conscious of the might of this great empire of the Southwest with its favorable climate, wide acres, immense resources, and growing millions. One hesitates to imagine any limits to the future greatness of Texas.

The comprehensive nature of the book is indicated by the wide range of subjects treated: climate, geology, geography, soils, minerals; history and description of agriculture, agricultural economics, marketing, transportation; rural social organization, education, living conditions, etc. It would require an expert in each of these lines to weigh the merits of the book as to accuracy of detail in each of the fields, but there is no reason to question the book on that score. What was aimed at, apparently, was the presentation of a well rounded picture of rural life in Texas supported by a wealth of facts. In this respect the author has succeeded.

A few particular points, out of a great number that might be mentioned, struck the reviewer's attention. For one thing Texas is a good example of the dominance of the agricultural interests over the other interests of the State. Some would want to call it agriculturally minded; or perhaps a still more modern version would be that it has an agricultural complex. Dr. Bizzell, on the other hand, presents some facts showing that industrialization is taking place, and that the process of urbanization, which has been the course of so many western states, has assumed noticeable proportions. But as yet the industrial challenge to agricultural interests seems to be only in its infancy.

In the matter of racial distribution it is shown that the negro is not holding his own with the white race, in spite of the fact that the negroes in Texas have been unaffected to any large extent by the migration to the North (p. 383). The Mexican, on the contrary, has increased rapidly and is an important part of the labor supply of the State. One wonders what justification there may be for our national policy of excluding Italians and not Mexicans. Why apply a quota law to Greece and not to Mexico? One wonders, too, why we have not been made aware of a Texas revolt against the Mexicanization of her province as we have of the California revolt against the Japanese. We have heard nothing of a Mexican menace.

Continuous changes in standards of living, folkways and modes are characteristic of Texas society. One change that is particularly potent for evil is the growth of tenancy, over half of the farms of the State being operated by tenancy. In view of this and some other tendencies described by Dr. Bizzell it is somewhat puzzling to have

to interpret one of his observations to the effect that "the appeal of the countryside is stronger today than ever before" (p. 406). If we may judge the strength of the appeal by the behavior of the population the statement made may be subject to some qualification.

On the matter of proportion of emphasis in the several parts of the book one might raise the question, at least the sociologist would be so disposed, whether enough space and emphasis has been devoted to the study of the human resources of the State. After all those are the most important resources in rural Texas. Possibly something might be said for another volume on this particular subject dealing with the quantitative and qualitative aspects of the population and the social institutions at much greater length than President Bizzell's space limitation permitted.

An outsider finds this volume a very valuable introduction to an interest in Texas rural life. It ought to be of still greater interest to every citizen of the State who wants to know more about his commonwealth and its problems. It ought to arouse his pride and challenge his will-to-progress.

WALTER B. BODENHAFFER.

Washington University.

THOMPSON, WALTER. *Federal Centralization*. (New York: Harcourt, Brace and Company, 1923. Pp. vi, 399.)

A very interesting aspect of constitutional history and law in the United States is the development of situations and the rise of problems which could not have been foreseen by the makers of the Federal Constitution, but which have been met by some application of that document. Dr. Thompson's book, *Federal Centralization*, is a thorough and very readable study of one of the most important of these new situations, the increased scope of Federal control over matters of social and economic interest.

The first part of the book is devoted to an examination of the constitutional basis for a Federal police power. Although the courts have repeatedly held that such a power does not exist, Dr. Thompson agrees with Professor Cushman¹ that it is frequently exercised under another name.

The Federal Government can exercise only those powers which the Constitution confers upon it. But due to the changed conditions of society and the complexities of modern life Congress is constantly enlarging its sphere of activities In the exercise of its enumerated powers it has made regulations which are essentially police regulations. The imposition of police regulations has sometimes been the

¹Cf. the series of articles in the *Minnesota Law Review*, 1919-1920, by Robert Eugene Cushman.

real motive of congressional enactments and some constitutionally enumerated power has been invoked merely to lend constitutional authorization to the legislation.

Under the heading of social legislation, Dr. Thompson discusses congressional regulation of public morals, promotion of public health, promotion of education, and regulation of the liquor traffic. The most interesting feature of this part of the book is the author's thorough approval of the child-labor decisions, partly on the ground that the enforcement of child-labor laws can best be handled locally, but principally because he believes, with the court, that to declare the child-labor acts constitutional would practically nullify the Tenth Amendment.

If Congress, through its powers to regulate interstate commerce, can determine what conditions must prevail in a factory with respect to the age of the employees there is no reason why it could not do the same thing with respect to sex, color, wages, and hours of work. Nor would it need to confine itself to labor legislation. It could set up standards with respect to compulsory school attendance, public health, divorce, conveyancing of property—in fact, everything now regulated by the states could be made subject to Federal regulation—and the Federal Government could enforce such standards under penalty of depriving a person of the privilege of sending his products in interstate commerce.

The writer evidently fails to agree with Cushman's comment that in such a case the due process clause could still be invoked, and that no stubborn consistency would prevent the courts from declaring obvious and arbitrary interference with individual rights unconstitutional, even though this should be attempted under the power to regulate commerce, or the taxing power.

The discussion of economic legislation is a very useful summary of the more important laws and court decisions affecting business and labor. Though the author is inclined to an unfavorable attitude toward Federal centralization in general, the logic of facts compels him to admit that "a constructive policy towards the railroads will increase rather than decrease governmental control." He suggests, also, that the interdependence of industry is making some degree of Federal control or intervention necessary in all serious labor disputes, in order that there shall be no interference with the normal course of interstate commerce.

Those readers who do not share Dr. Thompson's views upon the necessary effects of a measure such as the child-labor act of 1916, will ask whether there is a real as well as a verbal line of demarcation between the right of Congress to attempt to settle strikes, which

means a fixing of wages, hours and conditions, and the right which the author thinks that Congress should not have, to fix wages, hours, and conditions under its power to regulate interstate commerce, or its power of taxation. However, the writer's views are in complete harmony with those of the United States Supreme Court.

In the concluding chapters, the author discusses the reasons why Federal centralization has developed so greatly, and the hazards which he believes that this tendency entails. It is his opinion that "morals legislation . . . does not inherently lend itself to congressional action. Neither does such legislation as labor laws, domestic relations, and a vast amount of regulations with which the states are concerned." While urging "a workable division of functions" between the Federal and the state governments, he would not be satisfied with a division which left the states in the position of administrative agencies for the National Government. "The states, in order to retain their vitality as local governmental units, must be secure in their jurisdiction against Federal invasion. The inviolability of states rights is an essential feature of our constitutional system."

Throughout the book the author endeavors to maintain the social and economic viewpoint, as well as that of constitutional law. His attitude is unquestionably conservative, but he makes a remarkably successful attempt at unbiased presentation of his facts. Because of the important material which is brought together here, the book is worth while to every social scientist; and it should prove extremely useful as a reference work for students of Government.

MIRIAM E. OATMAN.

Norman, Oklahoma.

BISHOP, AVARD LONGLEY. *Outlines of American Foreign Commerce.* (Boston: Ginn and Company, 1923. Pp. vii, 132.)

The outstanding feature of Professor Bishop's book on American foreign commerce is its simplicity. Though the author states in the preface that he intends the work to be a textbook for mature beginners, and to furnish a broad treatment of principles which will benefit the business man and interest the general reader, it seems to be over-simplified for such purposs. A college freshman, or even a high-school senior, could study the book with great benefit, as could the earnest young employee striving to educate himself with a view to securing promotion; but the reader who possesses the slightest acquaintance with elementary economics will feel it a waste of time to follow the author's restatements of such commonplaces as: Division of labor between individuals necessitating exchange; man's wants are diversified and ever increasing; minerals are important in both domestic and foreign trade; good transportation is essential to commercial development.

The most valuable material in the book, from the standpoint of

the mature reader, is probably the chapter which deals with the promotion of foreign trade since the war, in Great Britain, Germany, and France. This, as well as the chapter on the promotion of American foreign trade, might well have been treated in much more detail.

In several places the point is stressed that the so-called unfavorable balance of trade is not the disastrous thing which it is generally considered.

If we want payments made to us by those who are our foreign debtors, we must be willing to take their goods in payment, rather than hope to receive payment in gold. So necessary is it that our imports expand to meet these conditions that we must learn to look with favor upon a probable early reversal of our trade balance, that is, upon a condition whereby the yearly imports will likely exceed the exports. Many similar passages might be quoted.

The author expresses himself with a curious caution on the subject of tariff policy, but the final impression which he makes is that of opposition to a high tariff.

The policy of imposing high duties upon imports into this country, as shown in the tariff of 1922, seems to the writer to be a logical result of the growth of nationalism under the stimulus of the World War; but, in his opinion, such action is, in all probability, not the best course to pursue at the present time, particularly because of the international financial situation brought about by the war.

A valuable feature of the book is its freedom from narrow nationalistic prejudices, and its insistence that our commercial policy must be consistent with our foreign policy. The closing admonition that "our viewpoint must continue to widen until we can think easily and judge wisely not only of national questions, but of international problems as well," expresses a truth which cannot be too much emphasized.

FREDERICK F. BLACHLY.

University of Oklahoma.

BEARD, CHARLES A. *The Administration and Politics of Tokyo*. (New York: The Macmillan Company, 1923. Pp. vii, 187.)

Any publication by Dr. Charles A. Beard is almost certain to be instructive, interesting, and stimulating, and to this general rule the present volume, though small, is no exception. It embodies the results of a survey of the government of Tokyo undertaken in 1922 at the request of the then mayor, Viscount Goto.

The primary purpose of the work on which this volume is the report, was to furnish the Japanese, and particularly the authorities responsible for the administration of the Japanese capital, with a working program for the improvement of the administration of

Tokyo. How acceptably this purpose was accomplished from the point of view of the Japanese authorities is eloquently demonstrated by the fact that when the earthquake and fire demolished the Japanese capital in great part in the fall of 1923, Viscount Goto, now Minister of Home Affairs, immediately cabled to Dr. Beard beseeching him to come at once to help in the work of reconstruction.

But aside from this primary purpose, the volume under consideration, published in English, was to furnish American students of municipal government with some insight into the government and politics of an otherwise almost wholly unfamiliar city. In this secondary purpose the report has also admirably fulfilled its end, for it sets out very briefly, but very clearly, the main facts about the present administration of Tokyo.

In still a third direction this study proves valuable. Aside from the description of existing conditions, each chapter contains criticisms and recommendations, and although they are directed specifically at the situation in Tokyo, they contain in simple form many general statements of conclusions applicable to municipal government and administration in general.

An enumeration of the chapter headings will give some idea of the scope of the work, which comprises an introduction and nine chapters, necessarily very brief. I. *The Criteria and Scheme of Municipal Science*; II. *The Urban Area and the City Government*; III. *The Powers of the City Government and the Structure of Administration Within Tokyo City*; IV. *The Management of Municipal Finances*; V. *The Purchase of Material Goods*; VI. *Personnel Administration*; VII. *Municipal Utilities*; VIII. *The Spirit and Practice of Self-Government in Tokyo*; IX. *A Summary Work Programme for the Government and Citizens of Tokyo*.

Not the least interesting portion of the book is the Introduction, which gives some insight into the way in which Dr. Beard tackled the very interesting but unusually difficult task that confronted him upon his arrival in Japan. In order not to violate the tradition which demands that every reviewer should find at least one peg on which to hang comment other than laudatory, it might be said that the index is so sketchy as to be valueless. But the brief compass of the book makes an index almost superfluous, so that even this minor point is scarcely worth mentioning.

HERMAN G. JAMES.

University of Texas.

PRICE, CLAIR. *The Rebirth of Turkey*. (New York: Thomas Seltzer, 1923. Pp. xii, 234.)

To Americans habituated to the martyr-legend of the Christians in the Near East, involving the Turks as butchers, this *apologia* for Mustapha Kemal Pasha and the Turkish renaissance must neces-

sarily come as a strange denouement. The author, a professional journalist assigned to "cover" the Near East and tell the truth, has endeavored to present his observations and his deductions from them in a dramatic form which the American public can assimilate. In this he has been markedly successful. In twenty-one brief chapter-sketches he sets the stage of the old Ottoman Empire with its various religious and ethnic groups and enacts in one passionate drama the *Götterdämmerung* of the Old Turks and the rise of the Turkish Siegfried, Mustapha Kemal. Other phases borrowed from the Wagnerian cycle are included, the Rheingold being recognizable in the oil fields of Mosul and the Valkyrie symbolized by flame-encircled Smyrna.

In this new background the drama is no less fascinating. The villains in the play are primarily England and Russia; the plot begins with the Anglo-Russian Treaty of 1907, is properly complicated at the decisive moment by the Potsdam Agreement of 1910 and the third act opens with the World War. Unfortunately for the villains, one of them is smitten with bolshevism at the climax and the other decides to take the loot single-handed, the aftermath of which is the Anglo-Russian war of 1918-1920. During this quarrel in the fourth act, Venizelos is left to hold stakes in Asia Minor. Mustapha Kemal gathers his forces at Angora, takes a Hannibalian oath to fulfil the Nationalist Pact, and, after fighting off his foes at every turn, rescues Smyrna from the villains and returns triumphantly to Angora after the political obsequies of Lloyd George. There the drama ends officially.

It is in the much more prosaic and less colorful epilogue that "The Real Problem of Turkish Nationalism" is encountered. In drawing the moral of the drama for his American audience, Price notes the fundamental and irrevocable change from the old order, political, religious, military, and economic, to the new. Westernism, which is for all practical purposes synonymous with our Occidental conception of industrialized nationalism, has come to Turkey to stay, and neither the fictitious pleas of alien minorities for a religious independence inviting foreign imperialistic intervention nor the maintenance of an obsolete economic order behind the authority of the Caliphate will be tolerated in the new era. The new nationalism of a revived Turkey has been compelled to win by force of arms (as was the case with Japan after the Chino-Japanese War), the recognition of the Occidental world that internal administration must be freed from foreign control in every way, while not even the Caliphate may be spared if it is standing in the way of the economic reconstruction of the New Turkey (just as the Shogunate was forced to go by the economic exigencies that paved the way for the Meiji era). The fact that this transition point has been passed is clearly

brought forth by the author, and whether his account runs counter to traditional prejudices or not, his conclusions seem inescapable.

So little has been written on Turkey from an unbiased or non-Christian standpoint that Mr. Price's interpretation, ultra-dramatic and far-fetched though it seem at points, forms an unusually valuable contribution to the political literature on the new Turkish state. Though it is to be taken *cum grano salis* at times, so vital is the presentation, so clear-cut the interpretation, that one must, in appraising the worth of the volume, acknowledge its artistic and journalistic merit despite its uncritical shortcomings.

MALBONE W. GRAHAM.

University of Texas.

TORMAY, CECILE. *An Outlaw's Diary: II. The Commune.* (New York: Robert M. McBride Company, 1923. Pp. 233.)

In this companion volume to her story of the Karolyist Revolution in Hungary* Countess Tormay reviews, from her intimate experiences, the story of the Hungarian Soviet. Her wanderings as a fugitive counter-revolutionist throw an intensely human sidelight upon the Red regime in her unhappy country. With her counter-revolutionary ardor unabated, and often writing under perilous circumstances, Miss Tormay has managed to reproduce the most vivid picture of the sufferings of all classes under the exactions of the Hungarian Commissars, and has thus preserved for posterity a record of unusual value—from the extreme nationalist standpoint. If her first volume, with its bitter venom against Karolyi, showed her utter misunderstanding of the liberal regime he sought to establish, this second volume, despite its overwhelming anti-Semitic bias, shows with unusual clearness how utterly the Allied Governments misunderstood or underestimated the forces at work in post-war Hungary. One will look far for a more graphic account of Bolshevism in Magyar Europe, but only when the diaries of those outlawed by the Restoration which followed the Commune have been published will a real picture of the political scene in Hungary be revealed. The story of a Karolyi or a Jaszi must be printed before the final panel in the triptych of the Hungarian Revolution will be complete.

MALBONE W. GRAHAM.

University of Texas.

BACON, CHARLES W., AND MORSE, FRANKLIN S. *The Reasonableness of the Law.* (New York: G. P. Putman's Sons, 1924. Pp. xii, 400.)

The thesis of this book is stated in the title: The Law in the

*See this *Quarterly*, Vol. IV., pp. 286-7, December, 1923.

United States of Today, as in the England of Sir Edward Coke, is the "Perfection of Reason." Now, as then, the law is said to be the application of reason to the problems of social control. The rules of the law are, according to this book, founded upon principles of right and justice that never change. The application of these rules varies with changes in social and economic conditions, and in conceptions of right and justice.

The Reasonableness of the Law endeavors to show that as the problems of social control have grown more complex with the progress of civilization, the rules of the law have, by the application of reason, been so extended as to satisfy reasonably the needs and the hopes of human beings who must look to legal institutions for the protection of their welfare.

An evolutionary point of view is taken, and the history of law, showing variations through the years, is cited in substantiation of this outlook. The exposition of this theory is based on numerous citations of state and federal decisions, tracing the origin of colonial law and the establishment of the legal system under the Constitution of the United States. The book may be considered a study of social legislation as interpreted by the courts, of constitutional law, and of common law and equity in many of its ramifications.

The effect of economic and social conditions on the content and practice of the law, as treated in the book, may be illustrated by the treatment of the later origin and use of courts of equity in the colonies. Equity causes were first decided by the governor and council instead of by judges and juries. "The Americans of that day were a nation of farmers," declare the authors. "Land was cheap and easily obtainable. There was very little commerce and almost no manufacturing. Hence, few cases arose in which the interference of a court of equity was needed." Thus, the historic conditions explain the existence and the operation of the law. An extended defense of equity, as a means of protecting rights where the law is inadequate, is given by case citations.

International law, the law of diplomacy, and statute law find treatment in the work. The large and controverted field of judicial control over legislation, the power of constitutional amendment, and decisions bearing on methods and powers of state legislatures are treated in an authoritative manner.

However, after considering this work, there is a feeling of disappointment. There is an impression that the authors, who set out to establish the reasonableness of the law as an agent of social justice in modern society, have evaded the issue, and got off the subject of law and modern social control, contenting themselves with summaries of the leading points of different types of law. It is true that the roots of present day law lie in a causal connection with the past, but many modern social thinkers, political and economic, would say

that the evolution of legal institutions is always behind the reasonable scientific needs of society. The book is painfully lacking in a consideration of the thought of those who would improve the administration of the law, and those who desire to see the reasonable results of modern investigation incorporated into our system of jurisprudence.

As a history of the law, the work is not to be impeached, but it actually seems to assume, as a conclusion, the thesis with which the book begun—that the law is the perfection of reason, and that the customary legal sanctions are adapted, by the interpretation of the courts, to fit the needs of modern society. The conclusion of the book has been the subject of just as extensive treatises without the summaries of different branches of the law. On the one hand, it may be true that law is the product of evolution; but, on the other hand, it is an entirely different question whether or not this evolution stands in correlation with economic, political, and sociological developments of the nineteenth and twentieth centuries.

The Reasonableness of the Law is the latest contribution to the orthodox and conservative legal literature. The authors say: "When new social conditions have called for different statutory enactments and the former principle is no longer reasonable, they apply new principles so that the aim and purposes of the constitutional guarantees may not be defeated." The modern student of administration and institutions has no quarrel to make with the "rule of reasonableness," but they say that the reasonableness of the courts is too often what has been reasonable under different social circumstances, and not what research is showing to be the reasonable reformative needs of the present. Outside orthodox legal ranks it is generally admitted that the judges' conception of reasonableness trails far behind similar conceptions in economics and politics, thus, making legal interpretation a "technical rule of reasonableness," and the elongation of antiquated common law, or other principles. Many social scientists and jurists, such as Dean Pound and Justice Holmes, entertain a much higher opinion of the ability of human reason to solve the needs of society than is evidenced by the traditional productions of social philosophy from the ancient wind-mill of court logic.

Minor phases of the work might be criticized, showing the authors to be out of touch with modern historical scholarship. An instance of this is the support of a discarded theory of the origin of trial by jury in preference to the documentary evidence assembled by Haskins in his work on Norman institutions.

FRANCIS G. WILSON.

University of Texas.

JENSEN, JENS P. *Problems of Public Finance*. (New York: Thomas Y. Crowell Co., 1924. Pp. xviii, 606.)

Elementary text-book writing in the field of public finance is yet

in its early stages. The present number of usable texts is very small, and many of the standard productions of past years are now out of date, or are too long and specialized for use in the ordinary college class. The *Introduction to Public Finance* by C. C. Plehn is one of the most usable of American texts, but this book is in need of revision, and in many places the over-conservative attitude of the writer does not do justice to modern thought. Among the English writers, Bastable, Dalton and Robinson have written books entitled *Public Finance*, but in many respects these works are not adapted for use as the basic text in the United States for a year's course in public finance. There are a number of French and German productions, but language and other difficulties exclude these from undergraduate use.

Problems of Public Finance by Jens P. Jensen is an extended survey of the field of public finance. The viewpoint of the book is not revolutionary or startling. In many instances the detail of the book is not as complete as might be desired, but the essential developments of economic and political thought in the fields of public expenditures, public revenues, public credit, and fiscal administration are concisely stated. The sections of the book dealing with shifting incidence and effects of taxation, corporation taxation, certain angles of public credit and other phases of the subject are somewhat brief. The definitive theory of the incidence of taxation is assumed; and the criticisms against the present inadequate systems of taxation are voiced.

One of the features of the book is the development of a section dealing with fiscal administration which many treatises on public finance consider with scant attention. Budgetary reform, legislative control over appropriations, and the treatment of the committee system deserve the comment given by Mr. Jensen. The system of fiscal administration in the United Kingdom, the United States, and the different commonwealths of the United States are taken up in some detail. Different types of budgets are treated, giving the advantages and defects of each type. The value of auditing and accounting, and of standard forms of accounts is stressed. The final chapter on the practical tests for efficiency in fiscal administration, while not unusual, is of suggestive importance to the student of public finance.

As an elementary text-book in public finance, filling an obvious gap in the number of valuable American elementary books on the subject, *Problems of Public Finance* is probably better in organization and material than most of the books now used in undergraduate college courses. However, it does not compare with other works of more specialized bearing involving divisions of the field of public

finance. The bibliographical material is for the elementary student rather than for those interested in research.

F. G. WILSON.

University of Texas.

KEEN, F. N. *Towards International Justice*. (New York: Harcourt, Brace & Company, 1923. Pp. 249.)

The period 1914-1919 witnessed a tremendous plethora of books and articles relative to the creation of some sort of international control over the actions of nations. The establishment of some sort of a league or society of nations with a vaguely defined sphere of control and supervision found many advocates. The setting up of a League of Nations with a definite constitution, clearly defined powers, carefully delimited jurisdiction gained the attention of some far-sighted intellectuals, who were at one time idealists and pragmatists. Such a figure was Mr. Keen. In his volume, *Towards International Justice* the author has collected some ten speeches on the subject of the League of Nations, dating from February, 1915, to February, 1923. From his discussion of the world in alliance (February, 1915), in which a concert of powers was established, to his treatment of "Hammering Out the Details," (December, 1917), and his advocacy of "A League of Nations with Large Powers," (December, 1918), Mr. Keen gives us a growing conception of the necessity of establishing a League of Nations and of giving it definite organization with clearly defined powers. The other essays may be regarded as expressions of Mr. Keen's retrospective view of the League of Nations and the changes wrought in international law and relations by its establishment. First among these is noted a series of suggestions for the revision of the Covenant to make the League more democratic, yet more potent (September, 1919, and April, 1920). In the next essay the question of the development of international law in the light of the establishment of the League is adequately dealt with (September, 1919). Viewing the League as it existed after the first assembly, the author gives a thorough discussion of the League and its machinery (November, 1920). "The League of Nations in Its True Perspective" (February, 1921), dealing with the purposes, powers, and far-reaching significance of the League, is no doubt one of the most valuable of the essays. "The Permanent Court of International Justice" (March, 1922), "The Duties of Nations (June, 1922), and "The Future Progress of International Organization" (February, 1923), are the subjects of the remaining essays. In his discussion of the future progress of international organization, the author points out the well-known, yet significant, need for the realization of a more articulate public opinion and for adding greater potency to the decisions of the League; the

necessity of establishing a more continuous and capable oversight on the part of the Council is given special emphasis.

This handy little volume of contemporaneously written addresses on the origin and development, the significance and defects, the reform and future of the League of Nations by one of its ardent British advocates, is eminently worthy of consideration of students of international organization.

LUTHER H. EVANS.

University of Texas.

WIGGAM, ALBERT EDWARD. *The New Decalogue of Science*. (Indianapolis: Bobbs-Merrill Company, 1923. Pp. 303.)

In his *The New Decalogue of Science*, Albert Edward Wiggam writes as a true biologist. What he has written in this book is sound scientific truth presented in virile, pointed, and illuminating style and language. He leaves no doubt as to his meaning. He drives home with force the most up-to-date facts of biology, psychology, and political and social science. What he says is not new information for the student in these fields, but for "his excellency, the statesman," he has a momentous message that will be a revelation of new knowledge. The ordinary man of affairs and the wayfarer can understand the fascinating truths of modern science as Mr. Wiggam hurls them boldly and forcefully through the pages of this book, though the reviewer is inclined to think they may get a somewhat distorted notion of the relative importance of the facts.

The central plea of the book is for the general acceptance of the spirit and the method of science and its application in statecraft, education, morality, and economic and social relations before it is too late. Otherwise, "all this sense of progress will be merely a biological joy ride with hell at the next turn." The fallibility of the scientific method is not once questioned. The laboratory is another Mount Sinai and the scientist—particularly the biologist—is another Moses, and through these instrumentalities God has delivered a "new decalogue" which is to usher in a "new dispensation." This new dispensation is heralded as full of "warnings of wrath, both present and to come, for the biological ungodly, as well as with alluring promises for them who do His scientific will." "These warnings should first make you tremble; they should, secondly, make you pray; they should, thirdly, fill you with the militant faith of a new evangel." This may be scientific but it sounds strangely ecclesiastical. Nevertheless, we may accept the premise as true that science has for the world today the best method for the solution of its many problems. If there is a better way it remains to be discovered. However, that biology is the science of sciences, the key to all knowledge worth knowing, some equally reputable scientists may reasonably question.

At the outset, five profound warnings "of biology to statesmanship" are sounded with clarity and finality. The first warning is that "the advanced races are going backward"—that is, biologically—and, because biologically, in every other respect as well. In his second warning, the biologist informs the statesman that "heredity is the chief maker of men." Such words of wisdom could come from no other than a true biologist. However, in the last paragraph of the chapter, the biologist admits that environment is important.

The third warning will strike terror into the hearts of some of our "latter day saints" with its declaration that "the Golden Rule without science will wreck the race that tries it." The trouble is not with the Golden Rule *per se*, but with the false conception and perverted version of it that is to be found in unwise charity and misplaced philanthropy. Equally startling to many will be the fourth warning which says that "medicine, hygiene, and sanitation will weaken the human race." This declaration is elaborated by saying "that the higher triumphs of science are mainly enlisted on the side of race deterioration Everywhere we turn we see that science has created a world where wishes *are* horses and beggars *do* ride, but it tends to create a race which can only survive in a moral and physical nursery." The fifth warning is no less disconcerting in its statement that "morals, education, art and religion will not improve the human race," in which connection he argues that "a thousand years of educating or improving the parents will never improve the children." It is another way of saying that acquired characters are not inheritable.

After receiving these fateful warnings proclaimed in catchy phrases, with considerable sound sense, and a reasonable basis in the facts of science, His Excellency, the Statesman, is led pompously up to the new Mount Sinai, the laboratory, and upon this biological mountain peak is handed the "new Decalogue, a new crystallization of all the stupendous ethical meanings of modern science." Here the old dispensation gives place to the new.

Space will not permit a full review of the ten commandments of biology to statesmanship. Stated as they appear in the chapter titles of the book they are announced as follows: *The Duty of Eugenics, The Duty of Scientific Research, The Duty of the Socialization of Science, The Duty of Measuring Men, The Duty of Humanizing Industry, The Duty of Preferential Reproduction, The Duty of Trusting Intelligence, The Duty of Art, The Duty of Internationalism, and The Duty of Philosophical Reconstruction.*

The twelve chapters comprising this section of the book are crowded full of excellent advice and counsel. Wit and satire help to intensify the sound reasoning of science and philosophy. No intelligent reader can go through these chapters without being stimulated to serious thought and mightily impressed with the stupendous task of human

engineering. The book may seem bombastic and grandiloquent to some readers, but it cannot fail to challenge attention and win approval from the most critical among them. It is a truly meritorious work, done in a fine spirit, and with a high and worthy purpose. It is a book to be read, reread, pondered over, and recommended or passed on.

W. E. GETTYS.

University of Texas.

ELDRIDGE, SEBA. *Political Action, a Naturalistic Interpretation of the Labor Movement in Relation to the State.* (Lippincott, 1924. Pp.xviii, 382.)

The reader of this volume should not allow himself to be deluded by the cover title, *Political Action*, but he should turn to the title page itself and note that a modifying clause has been added, and with this added note in mind he should be under no illusions. The book is not primarily one in the field of political science, but it is a book in the field of sociology, using the word in its broadest sense. The purpose, the writer tells us in his preface, is to bring to the political sciences, the principles and methods of some of the other social sciences, namely geography, sociology, and psychology. One might add that not only has he done that, but he has brought with him many of the more radical ideas now holding sway in those fields, themselves. The book is filled with quotations, and the source of those quotations will clearly show the basis upon which the author worked. To the reviewer it appeared that the works quoted were chiefly Thorndike, McDougall, and Wallas.

No bibliography is given, but at the end of each chapter there is a list of suggested readings. Going through these lists, the reviewer was struck with the fact that many of the best of the modern writers in political science were not mentioned. Nothing is there that shows that Professor Eldridge consulted Lowell's *Public Opinion and Popular Government*, although that book would have given him much on which to base an understanding of the liberals' point of view. The volume by Hall on *Popular Government* would also have been worth listing, the reviewer believes. Holcombe's recent volume on *The Foundations of the Modern Commonwealth*, covers in part much of the same field that is covered by Eldridge, yet it is not mentioned. Clearly sociology and not political science was the background upon which the book was based.

The reviewer would not wish, by the above statements, to be understood to imply that the book has no value to students in the field of government. On the other hand, it is doubtless true that those working in that field are those who most need to understand the ideas, principles, and methods employed by the students in the allied fields. And the student of government will be surprised to

find how many of the current political problems are social in their scope. Indeed, Professor Eldridge claims that the reasons for the past difficulties in the establishing of a "real political science" are due to the belief held by many that man is an ethical instead of a natural agent, to the time spent in discussing debatable questions, and to the failure to take into account the whole of the complex factors which determine political events.

The author finds that there are three factors operative in every social situation, namely, hereditary human traits and capacities, a physical environment, and culture or tradition. To the first of these factors the author devotes thirteen chapters, and to the other two he devotes one chapter each. The reviewer wonders if the author has not laid himself open to the criticism that the book is not properly balanced, especially when the author himself says that the physical environment must bulk large "in any account of man's political behavior, particularly where economic interests are concerned." In another place he says that "culture, more than anything else, differentiates societies from each other...." In view of these statements would it not seem that a little more space might well have been devoted to these subjects?

The five chapters devoted to political liberalism represent the point of view of the economic radical. But whatever one's own political theories, a reader has to agree with the author that the education of the masses and the instilling of the ideas of justice are two problems which have not been solved to date. In one place the author states that "The persistent instruction which might bring the average man to an understanding of such issues is out of the question, since the facilities for instruction—the schools, newspapers, etc.—are largely under the control of people who are opposed to any fundamental modification of the *status quo*." But surely, the presence of Professor Eldridge in a chair of one of our great state universities, and the publication of his book, are both facts which should cause him to modify the above contention. When these things are true, is there so little hope for political liberalism as the author would have us believe?

The belief of Professor Eldridge that a labor party will not be a success in America is interesting, and the last ten chapters might well be assigned as outside reading in a course in political parties. Whether one agrees or not, the point of view is stimulating and provocative of thought. This, in fact, is the chief value of the book—it presents old problems from a different point of view. And any book which will make us think is certainly worth while.

EARL H. KETCHAM.

University of Oklahoma.

BROOKS, R. C. *Political Parties and Electoral Problems*. (New York: Harpers, 1923. Pp. xv, 638.)

GOSNELL, H. F. *Boss Platt and His New York Machine*. (Chicago: Press, 1924. Pp. xxiv, 370.)

KENT, F. R. *The Great Game of Politics*. (Garden City: Doubleday, Page and Company, 1923. Pp. ix, 322.)

It is too well known to require repetition that the work begun some forty years ago by Bryce, Ostrogorski and Wilson is bearing excellent fruit. Investigations into the process of American Government have gone on at a surprising rate these many years, and the publication of the three books under consideration but adds to the already large number of behaviorist studies of American *real politik*. Although their purpose is somewhat different, the three authors have in common a sophisticated point of view and a desire to deal with actualities rather than with mere appearances or current assumptions and popular myths.

The work of Professor Brooks, most comprehensive in scope, is the result of a number of years of experience in the teaching of courses dealing with political parties and the book is designed for use primarily as a college text. It is divided into four parts, the first treating of *The Nature and Activity of Parties Generally*, the second with *The Development of Parties in the United States*, the third with *The Present Conditions of Parties in the United States*, and the last with *Problems of Party Reform in the United States*. About four-fifths of the book is given to the last two parts. Although the historical part of the work is brief, it is an excellent summary of the development of American parties. The first part indicates quite clearly that although there has been much progress in the study of *real politik* in the United States, there has been little worth while *staatstheorie*. So far as there is anything of a philosophy of political parties, or even of American Government, at the present time, it is the eclecticism of the text book rather than the product of political philosophers. It is the conviction of the reviewer that the book would be materially strengthened if the author had a clear theory of party government, but it is hardly to be expected that the present deficiency will be made up by a text book.

The able discussion of the party system and its workings is made more usable by the addition of certain pedagogical features, including the reading list at the end of each chapter, the appendix containing the platforms of the major parties in 1920, and the excellent index.

Although the United States has been the stamping ground of bosses for many years and although there has been a considerable amount of analysis of the working of the machines which have been manipulated by these same bosses, there have been very few adequate studies of this type of political leadership. To this small list Dr. Gosnell's book is a real addition. However, there may easily be some question as to whether his study of Boss Platt is really as

scientific as Professor Merriam, who writes an introduction for the book, seems to think. To be sure the work is relatively complete and it is both impartial and objective in method, and these are characteristics that have rarely been found in studies of this kind. But so far as the ascertainment of the real secrets of Platt's success as a leader it would seem that there is much yet to be done before the term scientific be applied to the results (unless its meaning be more carefully limited than has heretofore been the case; Professor Merriam, for example, uses "scientific" no less than five times on a single page of the introduction without having given any adequate attention to the problem of the extent to which more or less scientific methodology is applicable in the field of politics). This is not meant as a criticism of Dr. Gosnell's method nor of his book. But at the same time it is well to bear in mind that mere care in the securing of objective information cannot suffice in political science any more than it can in the physical sciences. There is still need for imagination and for interpretation of the data thus secured. This it is that makes the result enlightening and really adds to our understanding of the vital processes of government.

Mr. Kent, a political reporter of long standing, has as his subtitle *An Effort to Present the Elementary Human Facts About Politics, Politicians and Political Machines, Candidates and Their Ways for the Benefit of the Average Citizen*. He has given us a very readable description of the more spectacular aspects of American politics and political machines. The emphasis which he lays upon primaries, the control of precincts and the lack of effectiveness of most regulatory legislation are particularly enlightening. However, the work is somewhat confusing in several places. Particularly is this true of the treatment of party machines and the necessity for their continued existence (pp. 320-22). It seems that the difficulty is due to a confusion of political machines, political parties and government itself. For a hard-boiled political reporter, Mr. Kent seems to have a rather surprising confidence in "regular, intelligent and informed voting" by all of the voters. But he neglects to tell us how this condition is to be brought about. We may question then, whether he does not get away from the realm of practical politics, at least when he begins to talk about improving the present order of things, and delve into the mythical and elusive kingdom of Utopia. We all agree that "regular, intelligent and informed voting" is the cure for all of our political ills. The only thing that we do not seem to know is how to attain it.

B. F. WRIGHT, JR.

University of Texas.

HUGHAN, JESSIE WALLACE. *A Study of International Government*. (New York: Thomas Y. Crowell Company, 1923. Pp. xix, 401.)

In this work Dr. Hughan has performed a real service to both the

student and the general reader. From primitive and classical times the author has traced the development of international government to the present. She has skillfully shown how the evolution of the legislative, executive, and judicial branches have gradually evolved and have found expression in the League of Nations. She does not, however, consider the present League of Nations "as an achieved goal," but rather "as a milestone in the progress of international organization." The author's treatment of the Covenant, the organization, and work of the League, while illuminating, seems too brief, as only 64 pages are given to this important phase of the subject. This is in part offset by the thoughtful consideration of the League's problems in the light of economics, biology, and social psychology.

The usefulness of the book is enhanced by a full table of contents, and by a list of selected references at the end of each chapter. On the other hand, the value of the book is impaired on account of the poor index. The appendix contains a copy of the Covenant with proposed amendments in italics.

ROBERT P. FELGER.

College of Industrial Arts.

Teachers and students of French Government will find in the little handbook on *French Parties and Politics* by Roger H. Soltau of the University of Leeds, published in the series on *The World of Today* (Oxford University Press) an accurate guide to the labyrinth of party politics in France, particularly in relation to the period following the World War. To this task of *eclaircissement* Mr. Soltau has brought the skill in interpretation gained by years of residence among the French people and an unusual grasp of French political psychology. To view internal French politics accurately and to dissociate them from the maze of foreign complications is a task requiring acumen, and in this effort the author has succeeded admirably. In its contrasts between British and French procedure and practice the book is distinctly illuminating, all the more so as the comparison is made by an Englishman cognizant of all the factors on both sides of the Channel.

Herman Finer's *Foreign Governments at Work*, another volume in the same series, is an excellent attempt at interpretation of the actual *functioning* of the governments of France, Germany, and the United States in terms of the newer political theory of our times. The author, without fear or favor, points out critically the defects and virtues of each government in turn after a brief introductory chapter on the general evolution of political theories and institutions. The critique of American constitutional theory from the standpoint is quite damaging to preconceived opinions, but is distinctly worth

while and stimulating. Readers will be inclined to wince at the statement that

"the American Constitution (is) the embodiment of now outworn ideals, faded hopes, old fears, primitive economic and social facts" and that "that arrangement of society still dominates and cramps and arrests the vital, toiling ideal of a mighty people," (p. 57)

but the poignancy of the indictment is equaled by the careful array of evidence to support it. Genuine thinkers on the American philosophy of government cannot afford to overlook so vitalizing a presentation.

M. W. G.

Miss Theodora Kimball's *Manual of Information on City Planning and Zoning* (Harvard University Press, 1923), is easily the most comprehensive and thoroughly up-to-date treatment of the subject to be found in English. In preparing the *Manual* Miss Kimball evidently kept in mind the needs of the beginner as well as those of the expert in city planning. The first part of the book contains a brief explanation of city planning and its purposes, statements regarding organizations actively engaged in the furtherance of the city plan, lists of periodicals carrying articles on the city plan, short analyses with bibliography of the progress of town planning in other parts of the world, and excellent practical suggestions for the conduct of publicity campaigns for city planning and zoning, while the body of the work consists of an unexcelled bibliography, conveniently classified. Miss Kimball seems to have completely exhausted the literature in all of the many branches of this large field; and a complex index, in addition to the classification plan, serves to place the reader in instant contact with the sources of information on all of its many phases. Not the least important advantage of the book is the careful analysis of the various publications which makes available to the student with limited time, the chief sources of information without burdening him with the reading of all of those cited. The book will be an invaluable time saver to city officials, city planning commissions, and in general to all persons studying the merits and demerits, as well as the actual operation, of city planning and zoning.

I. S.

The Malady of Europe (Macmillan, 1923), the latest work of M. E. Ravage, is addressed in the first instance, we are told, to the "incorrigible irreconcilables" of America. It stands as a refutation of their "Europe is none of our business" contention, though the author does not entirely overlook the arguments of the "pro-ally group" who are "not the least put out by the uninteresting detail that there are no Allies," and gives passing consideration to the "salvation-by-faith brethren.... the never-say-die devotees of the League of Nations." So much for the selected audience.

Basically the book is a work of interpretation—of the underlying causes that have brought Europe to her present condition, of America's relation to them, of the causes of the peace treaty which the writer bitterly attacks. It is an indictment of America for deserting her president rather than the usual attack upon Wilson, of France in place of Russia as the great source of danger to Europe.

On the whole the work is well done, delightfully so at times. It is true that Mr. Ravage runs the risk of the writer who gives interpretations that go far beyond his stated facts—the risk of losing sight of some of those facts and forming generalizations too broad to stand the stern test of the negative instance. But in general the reasoning is sound, the interpretations definitely stimulating. In his final chapter the author turns from his "diagnosis" of the malady and "caustic comments about the quackeries of the healers" to his own prescription for the case. Certainly the suggestions here are worthy of critical attention. So, indeed, is the work as a whole.

M. W. G.

Edward and Florence Robinson's *Readings in General Psychology* (University of Chicago Press, 1923), was brought out for the specific purpose of helping teachers of introductory psychology to solve the problem of library assignments. The large number of students in classes in introductory psychology has made the problem of library assignments a difficult one, and the partial solution of this problem by the provision of valuable readings in a handy volume such as the present one will be welcomed by many teachers, not only in the field of psychology, but also in the fields of economics, sociology, political science, logic, and ethics. The book contains twenty-two chapters, comprising a total of 675 pages. An excellent table of contents, an index of subjects, and an index of names render the volume complete.

W. P. D.

Gold and The See-Saws by M. K. Graham (published by the author, Graham, Texas, 1923), constitute an indictment of the present gold standard and the fluctuations of the price level. The author contends that the "goods dollar" instead of the "gold dollar" would give, by the use of a national tabular standard to arrive at scientific approximations of value, a wholly new stability to social relations and would enable the world to progress steadily upward, with a comparatively sane and wholesome development of agriculture, manufacture, transportation, and education, by relieving them of the many shocks and ills which follow the vicious circle of the ever-changing value of the gold dollar. According to the writer, the "goods dollar" is a commodity standard with a gold base for reserve and redemption, the commodity standard giving it stability, and the gold base making it practicable.

F. G. W.

In his *Social Politics in the United States* (Houghton, Mifflin Company, 1924), Professor Fred E. Haynes has had as his purpose the presentation of the part which social and economic factors have played in our politics. As his work is written almost exclusively from secondary sources, it reflects accurately the inadequate information which we have concerning economic factors in the politics of the "middle period." With the exception of the first chapter (largely a summary of the writings of Beard and Turner in this field) the book deals almost exclusively with the post civil war period. However, it will be found of value by anyone interested in the economic and social movements that have played such an important part in political thought and in political party movements of the era.